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In the Supreme Court of the United States

OCTOBER TERM, 1974

CASPAR WEINBERGER, SECRETARY OF HEALTH, EDUCATION AND WELFARE, PETITIONER

v.

GEORGE H. ELDRIDGE

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1A–2A) is reported at 493 F. 2d 1230. The opinion and order of the district court (Pet. App. 3A–18A) are reported at 361 F. Supp. 520.

JURISDICTION

The judgment of the court of appeals was entered on April 1, 1974. The petition for a writ of certiorari was filed on August 29, 1974,[1] and was granted on

[1] On July 1, 1974, the Chief Justice extended the time for filing a petition for a writ of certiorari to and including August 29, 1974.

January 13, 1975. The jurisdiction of this Court rests upon 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the administrative procedures governing the termination of Social Security disability benefit payments, under which, prior to termination, a beneficiary is given a summary of the evidentiary basis for the proposed termination and an opportunity to submit additional evidence and a written rebuttal, but not an oral hearing, are constitutional.

CONSTITUTIONAL PROVISION, STATUTES AND REGULATIONS INVOLVED

The Fifth Amendment of the Constitution provides in relevant part:

> No person shall be * * * deprived of * * * property, without due process of law * * *.

Sections 221 (a), (c) and (d), 223(a)(1), and Section 225 of the Social Security Act, as amended, 70 Stat. 815–818, 42 U.S.C. 421 (a), (c) and (d), 423(a)(1), and 425, provide in pertinent part:

> Section 421. (a) * * * In the case of any individual, the determination of whether or not he is under a disability (as defined in section 416(i) or 423(d) of this title) and of the day such disability began, and the determination of the day on which such disability ceases, shall, except as provided in subsection (g) of this section, be made by a State agency pursuant to an agreement entered into under subsection (b) of this section. Except as provided in subsections (c) and (d) of this section, any

> such determination shall be the determination of the Secretary for purposes of this subchapter.
>
> * * * * *
>
> (c) * * * The Secretary may on his own motion review a determination, made by a State agency pursuant to an agreement under this section, that an individual is under a disability (as defined in section 416(i) or 423(d) of this title) and, as a result of such review, may determine that such individual is not under a disability (as so defined) or that such disability began on a day later than that determined by such agency, or that such disability ceased on a day earlier than that determined by such agency.
>
> (d) * * * Any individual dissatisfied with any determination under subsection (a), (c), or (g) of this section shall be entitled to a hearing thereon by the Secretary to the same extent as is provided in section 405(b) of this title with respect to decisions of the Secretary, and to judicial review of the Secretary's final decision after such hearing as is provided in section 405(g) of this title.
>
> Section 423. (a) * * * (1) Every individual who—
>
> (A) is insured for disability insurance benefits (as determined under subsection (c)(1) of this section),
>
> (B) has not attained the age of sixty-five,
>
> (C) has filed application for disability insurance benefits, and
>
> (D) is under a disability (as defined in subsection (d) of this section)
>
> shall be entitled to a disability benefit (i) for each month beginning with the first month after his

waiting period (as defined in subsection (c)(2) of this section) in which he becomes so entitled to such insurance benefits, or (ii) for each month beginning with the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was entitled to such insurance benefits which terminated, or had a period of disability (as defined section 416(i) of this title) which ceased, within the 60-month period preceding the first month in which he is under such disability, and ending with the month preceding whichever of the following months is the earliest: the month in which he dies, the month in which he attains age 65, or the third month following the month in which his disability ceases. * * *

* * * * *

Section 425. * * * If the Secretary, on the basis of information obtained by or submitted to him, believes that an individual entitled to benefits under section 423 of this title, or that a child who has attained the age of eighteen and is entitled to benefits under section 402(d) of this title, or that a widow or surviving divorced wife who has not attained age 60 and is entitled to benefits under section 402(e) of this title, or that a widower who has not attained age 62 and is entitled to benefits under section 402(f) of this title, may have ceased to be under a disability, the Secretary may suspend the payment of benefits under such section 402(d), 402(e), 402(f) or 423 of this title until it is determined (as provided in section 421 of this title) whether or not such individual's disability has ceased or until the Secretary believes that such disability has not ceased. In the case of any individual whose disability is subject to determination under an agreement with a State under section 421(b) of this title, the Secretary shall promptly notify the appropriate State of his action under this section and shall request a prompt determination of whether such individual's disability has ceased. * * *

The pertinent regulations of the Department of Health, Education and Welfare are contained in 20 C.F.R. 404.905, *et seq.*, and 20 C.F.R. 404.1501, *et seq.* Relevant portions of the Disability Insurance State Manual are reproduced as Appendix C to the petition (Pet. App. 19A–75A), and relevant portions of the Social Security Claims Manual are reproduced as Appendix B to this brief, *infra*, pp. 19A–61A.

STATEMENT

Under the disability insurance benefits program established by Section 223(a)(1) of the Social Security Act, as amended, 70 Stat. 815, 42 U.S.C. 423(a)(1), a worker is entitled to receive disability benefits only for the period during which he is disabled. Upon a determination that the disability has ceased, the Secretary must terminate the payment of benefits, effective the third month after the month of cessation of disability.

1. Respondent, a resident of Virginia, applied for disability benefits under the Social Security Act, which were awarded by the Secretary, acting through the Social Security Administration, effective in June 1968 (A. 11).[2] Respondent was informed that his claim would be reexamined due to the possibility

[2] Following an initial denial of his claim and affirmance after reconsideration, respondent was awarded benefits by decision of a hearing examiner (now administrative law judge) (A. 11).

of his medical recovery, and that his benefits would be terminated if the review demonstrated that he was no longer disabled (A. 11).[3]

The Virginia state agency scheduled respondent's case for review in 1972 and in March 1972 sent him a questionnaire (A. 12). The letter requested respondent to complete and return the questionnaire within ten days, and also informed him that if he required assistance or had any questions he could visit or telephone any Social Security office (A. 12).[4]

Respondent completed the questionnaire, stating that he had not improved and listing his treating physician (A. 12). The state agency obtained a medical report from the latter and also obtained the report of a psychiatric consultant based on his examination of respondent (A. 12).

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[3] Following a medical investigation and review of respondent's file, the Virginia state agency decided in February 1970 that his disability had ceased as of January 1970, and the Secretary suspended his benefits (A. 11) under since-abandoned procedures for the suspension of benefits prior to affording a claimant an opportunity to submit rebutting evidence. Compare *Richardson* v. *Wright*, 405 U.S. 208. In addition to pursuing his administrative remedies, respondent instituted litigation in the district court seeking to defer the suspension of benefits pending an administrative hearing (A. 11). On June 26, 1970, the district court ordered payments to be continued pending final resolution of the case on the merits (A. 11). The case was finally dismissed as moot on May 6, 1971, when the hearing examiner determined that respondent's disability had not ceased (A. 11).

[4] The state agencies responsible for administering this phase of the disability program typically operate through a single office in the state capital, but the more numerous local Social Security district offices can provide information and assistance to claimants and beneficiaries (see pp. App. A, *infra*, p. 15A, n. 33).

After considering the file, the state agency wrote respondent that, based upon the evidence, it had made a proposed determination that his disability had ceased in May 1972 (A. 12–13). The letter included a statement of reasons (*ibid.*).[5]

The state agency asked respondent to furnish within ten days any further evidence relating to the rea-

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[5] The letter stated (A. 12–13; emphasis supplied):

"We previously informed you that we were asked by the Social Security Administration to help determine whether your impairment still prevents you from working. Although you indicate on the report you recently completed for us that you do not feel your condition has improved so that you are able to return to work, the other information and evidence in your case shows that you are able to work, and have been since May, 1972.

"You were initially found to be disabled due to chronic anxiety and back strain. In addition you have been found to have diabetes. Medical evidence shows no significant motion limitation of your back which would impose severe functional restrictions. Diabetes is under control and no complications have been noted, secondary to this. Although you remain somewhat anxious, there is no indications [sic] of continued emotional problems of sufficient severity to preclude all work for which you are qualified.

"Therefore, disability benefits being paid on your social security number may be stopped unless additional evidence is submitted which shows that you are still unable to work because of your impairment.

"*If you have additional information you want us to consider, please let us know immediately, using the enclosed envelope; a reasonable additional amount of time will be granted where necessary for you to obtain and submit additional evidence.* If we do not hear from you within ten days, we will forward your records to the Social Security Administration and when a formal decision is made you will be notified.

"Under the Social Security Law, benefits may be paid for a three-month period of adjustment. This period includes the month in which you have a regained ability to work and two additional months.

sons it gave or to request further time to obtain such evidence (A. 13). In response, he disputed one characterization of his claim made in the state agency's statement of reasons [6] and stated that the agency already had "enough evidence" in the file upon which to base a decision (A. 13).

Upon the basis of this information, the state agency determined that respondent had ceased to be disabled in May 1972 and forwarded that determination to the Social Security Administration, which accepted that conclusion and on June 12, 1972, determined that payments of benefits to respondent should cease, effective in July 1972 (A. 14), after the two-month statutory grace period (see p. 16, *infra*). Social Security notified respondent in writing of this determination and of his right to request reconsideration within six months (A. 14).

Respondent did not seek reconsideration. Rather, on August 3, 1972, he filed his complaint in this case seeking a declaration that the administrative procedures established by the Secretary for determining whether there was a continuing disability were unconstitutional, and an injunction requiring the Secretary to continue paying respondent benefits until he is afforded an oral evidentiary hearing concerning the cessation of his disability (A. 1–3). The Secretary moved to dismiss on the ground that respondent's benefits had been terminated pursuant to lawful regulations that do not violate due process (A. 3–4), and on February 13, 1973, the district court ordered respondent's benefits reinstated pending its final disposition on the merits (A. 15–16).

[6] Respondent claimed that he had arthritis of the spine rather than a strained back (A. 13).

On April 6, 1973, the district court held that the administrative procedures pursuant to which the Secretary terminated respondent's benefits were unconstitutional (Pet. App. 6A–18A). The court noted that since respondent did not contend that the Secretary had failed to comply with the applicable procedures the only issue was whether those procedures satisfy due process. The court ruled that respondent's interest in continued receipt of Social Security disability benefits is indistinguishable from the state welfare beneficiary's interest involved in *Goldberg* v. *Kelly*, 397 U.S. 254, and *Wheeler* v. *Montgomery*, 397 U.S. 280 (Pet. App. 8A–10A), and that, because disability determinations may involve subjective judgments in resolving conflicting medical evidence and are not exclusively based upon "objective" medical evidence, a due process standard different from that required by *Goldberg* v. *Kelly, supra*, for termination of welfare benefits is not justified for termination of Social Security disability benefits (Pet. App. 10A–13A).

The court rejected the Secretary's contentions that the protections against possibly erroneous decisions contained in the procedures complied with minimum standards of due process when viewed in the context of the administrative burden and immense costs that would result if the Secretary were required to provide an oral evidentiary hearing prior to the termination of benefits (*id.* at 12A–17A).

The court remanded the case to the Secretary for the payment of disability benefits and for further proceedings not inconsistent with the court's opinion (*id.* at 18A).[7]

The court of appeals affirmed on the opinion of the district court (*id.* at 2A).

SUMMARY OF ARGUMENT

1. Respondent's Social Security disability insurance benefit payments were terminated by the Secretary pursuant to procedures evolved to cope with the enormous burdens presented in administering a multi-billion dollar program in the context of a cooperative federal-state institutional structure. Those procedures are fair and satisfy due process requirements.

Before his benefits were terminated, respondent was given the opportunity to submit evidence demonstrating his continuing disability, and he did so. After the state agency involved in administering the disability program tentatively determined that he was no longer disabled, respondent was told the basis for that conclusion and was given a further opportunity to submit evidence. Though many take advantage

[7] The court's order continued the reinstatement of respondent's benefits. At current levels he is entitled to receive benefits of $163.60 per month. As a result of his disability, he is also entitled to receive both hospital and supplementary medical insurance under the Social Security Act, 42 U.S.C. 1395, *et seq.*, in which case a monthly premium of $6.30 would be deducted from his monthly benefits, so that his net monthly benefit would be $157.30. Respondent's children would also be entitled to receive, as his auxiliary beneficiaries, a monthly benefit totalling $151.00 as a result of his disability, pursuant to 42 U.S.C. 402(d)(1).

of that opportunity, with favorable results, respondent declined to do so, saying that the state agency already had "enough evidence."

After the state agency, with the concurrence of the Secretary, made its "initial determination" that respondent was no longer disabled, respondent did not seek reconsideration or request an evidentiary hearing, although many beneficiaries, taking advantage of the continuing right to submit additional evidence and to obtain *de novo* review, successfully seek both.

The courts below held that those procedures unconstitutionally deprived respondent of property without due process because prior to termination of disability insurance benefits respondent had no opportunity to appear personally or confront and cross-examine the witnesses who provided the evidence upon which the termination decision was based. The courts thus extended to the termination of Social Security disability payments the procedures that this Court in *Goldberg* v. *Kelly,* 397 U.S. 254, required for termination of welfare benefits. The two situations are sufficiently different, however, to justify different procedures.

2. This Court has held that, in determining what procedures for denying or terminating statutory benefits satisfy due process, the competing interests must be accommodated. Those interests are: the worker's interest in continued receipt of disability insurance benefits assessed in light of the reliability of the existing procedures, and the government's interest in avoiding unneeded administrative burdens and costs that would deplete the ability of the disability insur-

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ance trust fund to pay out the maximum proportion of its revenues as benefits to eligible workers.

A. Unlike the welfare recipients involved in *Goldberg* v. *Kelly*, the entitlement of disabled workers to Social Security benefits is unrelated to need. While many disabled workers may well rely heavily on them, such benefits are not, by definition, the last line of defense against poverty. Disabled workers may have income from a variety of public and private programs or other assets; other members of their families may be employed; and welfare and other programs may be available in case they are truly needy. Thus, disability benefits do not share the unique nature of welfare benefits that underlay the Court's decision in *Goldberg* v. *Kelly*.

B. The existing procedures provide a fair method for determining whether disability has ceased. Their reliability is not undermined by the lack of personal appearance and cross-examination before benefits are terminated. Only fifteen percent of all initial determinations that disability has ceased are ultimately reversed as a result of further administrative proceedings or on judicial review. In many of these cases, moreover, the different result reflects merely different judgments made in the subsequent *de novo* administrative review, or the submission of new evidence.

Disputed terminations of benefits typically involve, as here, a determination of medical recovery. Such determinations are based largely upon medical reports by the worker's own doctor and by other doctors. Such evidence is "uniformly recognized" to be reliable

(*Richardson* v. *Perales*, 402 U.S. 389, 405), and with evidence of that character, where veracity and memory are rarely in issue, cross-examination is of limited value. That the right to appear in person is not critical is indicated by the fact that on reconsideration, where there is no personal appearance, the decision is often favorable to the worker. In any event, even a high "reversal" rate does not imply that the existing procedures for making the initial determinations lack fundamental fairness.

C. The requirement of a pre-termination evidentiary hearing would entail enormous administrative burdens and expense, without compensating improvement of the reliability of the existing procedures. It is estimated that an additional 11,000 hearings annually would be required in disability termination cases. Under the Social Security Act, determinations of disability must be made by the state agency in cases of medical recovery. Those agencies, however, are centrally located, usually in a single office, are already overburdened with work on this and other programs, and are not staffed by personnel who are trained or necessarily qualified to conduct evidentiary hearings.

The Social Security Administration's Bureau of Hearings and Appeals would not be able effectively to handle this large additional number of hearings. That Bureau now conducts hearings under all Social Security programs, as well as under new related programs for the needy disabled and for miners with "black lung" disease. Despite expansion of the Bureau, it is falling further behind in coping with its

enormous and unavoidable existing caseload, so that there is currently at least a ten-month delay between hearing requests and decisions. Conducting an additional 11,000 hearings would mean either that many claimants under other programs would face further delays in receiving benefits to which they may be entitled, or that many workers no longer entitled to disability benefits would unjustifiably continue to receive benefits while awaiting a hearing.

The costs of such a pre-termination hearing requirement, moreover, would be substantial—as much as $25,000,000 annually. Such an expense could impair the already-precarious actuarial soundness of the disability insurance trust fund, perhaps thereby depriving eligible workers of benefits to which they might otherwise be entitled.

ARGUMENT

The Current Procedures for Termination of Social Security Disability Insurance Benefits Provide Due Process to Beneficiaries

I. INTRODUCTION: THE PROCEDURES CURRENTLY FOLLOWED IN TERMINATING SOCIAL SECURITY DISABILITY INSURANCE BENEFITS

A recent comprehensive study of the federal disability insurance program concluded that the Social Security disability program, which this Court has termed "a comprehensive complex administrative program" (*Richardson* v. *Wright*, 405 U.S. 208, 209), "has always been the most complex of the Federal cash benefit programs to administer." Staff of the House Committee on Ways and Means, 93d Cong., 2d Sess., *Report on the Disability Insurance Program* 7 ("*Staff Report*"). We begin, therefore, by describing the pertinent features of that program as established by Congress and implemented by the Secretary.

A. THE NATURE OF THE BENEFITS AND THE DISABLED WORKER'S ENTITLEMENT TO THEM

In 1950 Congress established a program of federal assistance, supported by general revenues, to states that provided public assistance to needy persons who were, *inter alia*, permanently and totally disabled. 64 Stat. 555.[8] In order to provide benefits for disabled workers who were not necessarily needy (see H. Rep. No. 1189, 84th Cong., 1st Sess., p. 4),[9] Congress established, in the 1956 amendments to Title II of the Social Security Act, a new program of disability insurance for workers. 70 Stat. 815.[10]

Financed by revenues from employers' and employees' payroll taxes paid into a separate disability insurance trust fund (26 U.S.C. 3101(a), 3111(a); 42 U.S.C.

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[8] This program has recently been replaced with the Supplemental Security Income program, discussed below (see pp. 22–24, *infra*), involving direct federal aid to the needy disabled, among others. 42 U.S.C. (Supp. III) 1381, *et seq.*

[9] The program was described in the legislative history as a first line of defense, public assistance being the second (102 Cong. Rec. 13038 (remarks of Senator George)), in order that disabled workers not be required "to become destitute before they receive earned benefits." 102 Cong. Rec. 13022 (remarks of Senator Jackson).

[10] The Amendments also established a program of benefits for disabled widows and widowers (42 U.S.C. 402(e)(1)(B)) and disabled children (42 U.S.C. 402(d)(1)(B)) of deceased workers. These benefits are administered through essentially the same procedures as those governing the disability program for disabled workers, and we do not discuss them separately.

401(b)), the program provides monthly benefits for a disabled person who has worked sufficiently to have an insured status (42 U.S.C. 423(c)(1)) and who has had substantial work experience in a specified period preceding the onset of disability.[11] If a worker qualifies for disability benefits, the program also provides benefits to the worker's dependents under specified circumstances, particularly involving the age of the auxiliary beneficiary. 42 U.S.C. 402 (b), (c), (d).[12] In addition, at age 65 a disabled worker's benefits are automatically converted to retirement benefits (42 U.S.C. 416(i)(2)(D), 423(a)(1)), payable regardless of whether the worker thereafter remains disabled. Prior to age 65, however, the worker is entitled to disability benefits only so long as his or her disability continues, and, ordinarily, for the two months following the month in which the disability ceased. 42 U.S.C. (Supp. III) 423(a).

Thus, to establish initial and continued entitlement to benefits, the Act requires the worker to prove "disability" within the meaning of the Act by furnishing "such medical and other evidence of the existence

[11] A disabled worker older than 30 (as most are) must have at least 20 quarters of covered employment in the 40 quarters preceding the disability; less stringent requirements apply to younger workers. 42 U.S.C. 423(c)(1).

[12] Children of a disabled worker are ordinarily entitled to benefits until they reach age 18, or age 22 if they pursue higher education. 42 U.S.C. 402(d)(1). A worker's spouse is also entitled to benefits under certain conditions. 42 U.S.C. 402(b), (c). For convenience, however, we shall use "worker" and "beneficiary" to refer to all categories of beneficiaries, and unless otherwise indicated.

thereof as the Secretary may require." 42 U.S.C. 423 (d)(5). In carrying this burden, the worker must demonstrate that he or she is unable

> to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months * * *. [42 U.S.C. 423(d)(1)(A).]

In satisfying this test, the worker must demonstrate, by means of "medically acceptable clinical and laboratory diagnostic techniques" (42 U.S.C. 423(d)(3)), that he or she has a physical or mental impairment, as defined in the Act (42 U.S.C. 423(d)(3)), that is of such severity that

> he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy, regardless of whether such work exists in the immediate area in which he lives, or whether a specific job vacancy exists for him, or whether he would be hired if he applied for work. [42 U.S.C. 423(d)(2)(A).][13]

Unlike some disability programs (see *Staff Report* 6), the Social Security disability insurance program does not recognize degrees of disability; at any given time a worker either is or is not "disabled," and the amount of the benefits is not related to the nature or

[13] There is a different definition of disability for eligible widows and widowers. See 42 U.S.C. 423(d)(2)(B). The Secretary's regulations concerning disability are set forth at 20 C.F.R. 404.1501–404.1539.

extent of the disability.[14] Entitlement to benefits is also unrelated to the worker's need or to the amount of the worker's income or support from most other sources, such as employment of other members of the family, the worker's own limited or occasional employment,[15] savings, investments, or tort claim awards, or the "many other important programs both public and private, which contain provisions for disability payments affecting a substantial portion of the work force * * *" (*Richardson* v. *Belcher,* 404 U.S. 78, 85–87 (Douglas, J., dissenting)), *e.g.,* workmen's compensation awards,[16] private insurance, public or private pensions, veterans benefits, food stamps, or public assistance. See *Staff Report* 9–10, 419–429; cf. Dixon, *Social Security Disability and Mass Justice: A Problem in Welfare Adjudication* 90–91 (1973). Even if otherwise qualified, moreover, a disabled worker is ordinarily not entitled to receive benefits until having been

[14] The level of benefits is determined by the worker's average monthly wage, age, and other factors specified in 42 U.S.C. (Supp. III) 415. See 42 U.S.C. (Supp. III) 423(a)(2).

[15] In 1970, about ten percent of disabled workers receiving disability benefits reported earnings from employment. *Staff Report* 390–395. Of course, in a period other than a trial work period (see p. 25, *infra*), earnings exceeding a level established by the Secretary (see 20 C.F.R. 404.1534) could lead to a determination that the worker was engaged in "substantial gainful activity" and hence no longer entitled to benefits (see p. 25, *infra*).

[16] Workmen's compensation benefits, however, are deducted in part in accordance with a statutory formula. 42 U.S.C. (Supp. III), 424a; 20 C.F.R. 404.408; see *Richardson* v. *Belcher*, 404 U.S. 78.

disabled for five months. 42 U.S.C. (Supp. III) 423(c).

Because the program is not limited to the permanently disabled. Congress has from the outset stressed rehabilitation as a purpose. Thus, it is the declared policy of Congress that disabled workers seeking benefits be referred to state vocational rehabilitation agencies (42 U.S.C. 422(a)), and a worker's refusal to accept rehabilitation services may be a ground for reducing or withholding benefits. 42 U.S.C. (Supp. III) 422(b); see 20 C.F.R. 404.422.

In sum, the benefits are conditional in nature, and a beneficiary is entitled to them only so long as the conditions of entitlement are satisfied.

B. THE INSTITUTIONAL SETTING OF THE TERMINATION PROCESS

The Social Security disability insurance program is administered through an unusual combination of federal and state agencies performing interrelated functions specified by the Act and the regulations. As we have noted, Congress intended that the disability program be coordinated with state vocational rehabilitation programs, to provide disabled workers a means of adjusting their employment prospects to their impaired abilities (see pp. 18–19, *supra*). In an effort to implement this purpose, Congress required that state vocational rehabilitation agencies be given the opportunity to play a significant role in the administration of the Social Security disability program.

The Act provides that the determinations whether a person is under a disability, when it began, and

when it ceased shall be made by the state agency administering a plan approved under the Vocational Rehabilitation Act, 41 Stat. 735, as amended, 29 U.S.C. (Supp. III 701, *et seq.*, or by another appropriate agency, pursuant to an agreement entered into with the Secretary.[17] That determination is "the determination of the Secretary for purposes of this [program] * * *." 42 U.S.C. 421(a).[18]

The standards to be applied and the procedures followed by a state agency are prescribed by the Secretary through the uniform state agency agreements (see 42 U.S.C. 421(b)),[19] supplemented by a Disability Insurance State Manual ("DISM") (see, *e.g.*, Pet. App. 19A–75A), and the state agency's costs of administration are paid out of the federal trust fund.

[17] The use of state agencies to make determinations of disability for federal purposes was initiated in the Social Security Amendments of 1954, 68 Stat. 1080, as amended, 42 U.S.C. 416(*i*), which established a "freeze" on a disabled worker's insured status and benefit amount for purposes of the basic old age and survivors insurance program. See *Staff Report* 110–112. This use of state agencies was intended to "serve the dual purpose of encouraging rehabilitation contacts by disabled persons and would offer the advantages of the medical and vocational case development undertaken routinely by the rehabilitation agencies. These agencies have well-established relationships with the medical profession and would remove the major load of case development from the Department." H. Rept. No. 1698, 83d Cong., 2d Sess., pp. 23–24.

[18] The Act authorizes the Secretary to make the determination concerning disability if a state declines to enter into such an agreement (42 U.S.C. 421(g)), but, while not required to, all states have done so. *Staff Report* 148.

[19] A model agreement is set forth at *Staff Report* 178–187.

42 U.S.C. 421(e).[20] In most cases the state's vocational rehabilitation agency acts as the "state agency" for purposes of the Social Security disability insurance program (*Staff Report* 148), typically operating through a centralized office serving the entire state (A. 18).[21]

The Act authorizes the Secretary to review on his own motion a state agency's determination that a person is disabled (but not a determination that the person is not disabled) and permits the Secretary to determine that the person is not disabled, or that the disability began later or ceased sooner than determined by the state agency. 42 U.S.C. 421(c). Thus, at this stage the Secretary may only make a determination concerning a worker's disability that is less, but not more, favorable to the worker than that made by the state agency. Congress provided this one-sided revision authority with the expectation that the Secretary would use it "in order to assure uniform administration of the disability benefits and to protect the Federal Disability Insurance Trust Fund from unwarranted costs." H. Rept. No. 2936, 84th Cong., 2d Sess., p. 26.

The Secretary has delegated his responsibilities and powers under the Act to the Social Security Ad-

[20] The federal government also bears the state agency's costs of rehabilitating certain disabled workers. 42 U.S.C. (Supp. III) 422(d).

[21] The state agency in Virginia, the Disability Determination Section of the Department of Vocational Rehabilitation, has two offices for this purpose, in Richmond and Norfolk.

ministration ("SSA"). See 40 Fed. Reg. 4473, amending 33 Fed. Reg. 5828. The disability insurance benefits program is handled principally by SSA's Bureau of Disability Insurance, headquartered in Baltimore,[22] hearings and appeals are handled by SSA's Bureau of Hearings and Appeals. Cf. 20 C.F.R. 422.201, *et seq.*[23] In addition, as we discuss below in more detail (see App. A, *infra,* pp. 14A–16A), local SSA district offices also play a role in administering the disability insurance program. SSA employees implement the Act pursuant to a Claims Manual ("CM") (*e.g.,* App. B, *infra,* pp. 19A–61A).

In considering the institutional setting, two programs similar to the Social Security disability insurance program should be mentioned briefly, although the procedures followed in those programs differ from those followed under the disability program in issue here. In 1972 Congress enacted the Supplemental Security Income ("SSI") program for the needy aged, blind or disabled, 86 Stat. 1465, 42 U.S.C. (Supp. III) 1381, *et seq.,* which replaced the program of federally-aided state assistance to the needy disabled established in 1950 (see p. 15, *supra*) with title XVI of the Social Security Act. The new program provides direct federal aid to needy persons who are aged, blind or "disabled," defined in the same manner

[22] The Bureau has approximately 6,000 employees at headquarters (*Staff Report* 134), who are also responsible for other programs.

[23] At the end of fiscal 1974, 482 administrative law judges were authorized to serve in SSA's 118 hearing offices throughout the country (*Staff Report* 140), but they are responsible for hearings under a variety of other programs.

as in the Title II Social Security disability insurance program. See 42 U.S.C. (Supp. III) 1382c(a)(3).

In addition, a "grandfather" clause in the SSI program automatically extended such benefits to persons who were already receiving benefits under existing state programs for the needy aged, blind or disabled (which all states, including Virginia,[24] had adopted) so long as they continue to meet the state standards, even if such persons would not be regarded as disabled under federal standards. 42 U.S.C. (Supp. III) 1382c (a)(3)(E). According to SSA, about 3 million people became entitled to SSI benefits under the grandfather clause, in addition to about 1.25 million under the federal SSI standards.

A person may receive disability benefits under both Title II (involved here) and SSI, and as of November 1974 about 480,000 of the 1.5 million receiving SSI benefits as being disabled were also receiving Social Security disability benefits, although the amount of SSI benefits would be reduced in such cases in accordance with the statute, 42 U.S.C. (Supp. III) 1382a (a)(2)(B). However, if Social Security disability benefits were terminated and SSI benefits were not,[25] the amount of the latter would be increased.

The SSI program, which went into effect in January 1974, is also administered through the combined efforts of SSA and the state agencies, in that determinations of "disability" for that program are made by

[24] See Va. Code 63.1–104, repealed by Va. Code 63.1–25.1 (1974 Supp.).

[25] This could occur if a worker were no longer disabled by federal standards but was still disabled by the state standards applicable under the grandfather clause.

the same state agencies as are used under 42 U.S.C. 421. See 42 U.S.C. (Supp. III) 1383b(a). This program has already placed a heavy workload on the state agencies,[26] and that workload is being felt, and will increasingly be felt, by SSA's Bureau of Disability Insurance. See generally *Staff Report* 55–59, 122–124, 135–137, 396–411.

In addition, in legislation enacted in 1969 and 1972, Congress established a program of disability benefits for miners suffering from pneumoconiosis ("black lung" disease), which suddenly imposed an enormous caseload on the Bureau of Disability Insurance [27] under a program that is presently scheduled to last until at least 1981, 83 Stat. 792, as amended, 30 U.S.C. (Supp. III) 901, *et seq.* See generally *Staff Report* 8–9, 119–121, 412–416.[28]

Both of these new programs are also beginning to place great strains on the personnel and resources of SSA's Bureau of Hearings and Appeals, which also handles Social Security disability cases. *Staff Report* 8–9, 58.

[26] We are informed by SSA that between July 1, 1974, and January 22, 1975, 689,000 disability-related claims under the SSI program were submitted to the state agencies, of which 219,000 were still pending at the end of January 1975.

[27] The state agencies involved in making determinations under the Social Security disability insurance program are not ordinarily involved in making determinations under the black lung program.

[28] SSA's responsibility is generally limited to claims filed before July 1973, the Department of Labor having been given responsibility for most claims filed thereafter. 30 U.S.C. (Supp. III) 925, 931, *et seq.* By the end of 1973, however, more than 500,000 black lung claims had been filed with SSA (*Staff Report* 415) and, according to SSA, 30,000 are now at the hearing stage.

C. GROUNDS FOR TERMINATION OF BENEFITS

Determinations of disability require that the statutory criteria see pp. 16–17, *supra*) be applied to inherently dynamic factual conditions: mental and physical impairments may improve (or worsen); the worker may be rehabilitated through training and therapy; and the existence of jobs the worker can perform may be affected by economic or technological developments. Cf. *Staff Report* 15. Accordingly, eligibility for disability insurance benefits is not permanent and is dependent upon the continued existence of the facts on which the entitlement is based.

The Act, moreover, provides that disability benefits may not be paid for any month in which a worker engages in "substantial gainful activity" as defined by the Secretary. 42 U.S.C. 423(d)(4); see 20 C.F.R. 404.1532–404.1534. In order to encourage disabled workers to return to work, however, the Act also provides for a nine-month "trial work period," beginning with the month in which a worker became entitled to benefits; employment during that period is not to be considered in determining whether a worker's disability ceased during that period, 42 U.S.C. 422(c); see 20 C.F.R. 404.1536; CM § 6703; DISM § 352.1–352.6.[29]

[29] If a worker's period of disability began within five years after the termination of a prior period of disability, he would have been entitled to his insurance benefits without serving the waiting period (now five months) between the onset of disability and entitlement to monthly benefits. 42 U.S.C. (Supp. III) 423(a). In such cases, the trial work period provision does not apply. CM § 6703.2(c); DISM § 352.3.

Benefit payments to a small proportion of all beneficiaries are terminated each year. Thus, while at the end of 1973 there were 2,016,626 disabled workers receiving monthly disability insurance benefits totalling $4.7 billion annually (*Staff Report* 313), and 1,542,356 auxiliary beneficiaries receiving $1.04 billion ($280 million for disabled workers' spouses, $760 million for their children) (*id.* at 307, 314), during 1973 SSA terminated the benefits of 37,926 workers (and, consequently, their 50,000 or so auxiliary beneficiaries [30]) (*Staff Report* 347), as well as of an additional small number of disabled spouses and children. *Id.* at 310–311.

The principal causes of such terminations are that the worker is no longer disabled or has returned to work (Pet. App. 22A; cf. App. A, *infra,* p. 2A, n. 3).[31] *Staff Report* 347. For auxiliary beneficiaries, changes in relationship, dependency status or age and completion of schooling are also causes of termination (cf. p. 54, *infra,* n. 66).[32] Because this case involves medical

[30] This is an estimate provided by SSA on the assumption that workers whose benefits are terminated have the same average number of auxiliary beneficiaries as do all workers receiving benefits.

[31] In a small number of cases, estimated by SSA to be about two percent of total disability terminations, benefits are terminated because a worker about whom there is an unresolved issue of continuance of disability has persistently refused to cooperate by providing the necessary evidence or cannot be located (see App. A, *infra,* p. 4A, n. 8). CM §§ 6736.4, 6736.5; DISM § 356.

[32] The procedures followed in such cases, which typically do not involve any controversies, differ from those followed in medical recovery cases and are not involved here.

recovery, we shall focus on ~~them~~ the procedures in such cases.[33]

D. THE PROCEDURES FOLLOWED IN TERMINATING BENEFITS BECAUSE OF MEDICAL RECOVERY

In Appendix A to this brief (*infra,* pp. 1A–17A), we set forth in detail the procedures followed, both before and after termination, in terminating Social Security disability insurance benefits because of medical recovery (and return to work). We also include there a variety of statistical data concerning the implementation of those procedures. Here we merely summarize that material.

Determinations that a worker's disability has ceased because of medical recovery—the most common type of disputed determination—typically occur, as in this case, as a result of a medical examination previously scheduled in view of the possibility that the worker would recover (App. A, *infra,* p. 2A). In making such a "continuing disability investigation," the state agency periodically requests the worker to submit information concerning his present condition, medical treatment and medical restrictions, ability to return to work, employment during the past year, receipt of vocational rehabilitation services, and anything else relevant to his continuing entitlement to benefits. Unless the response provides clear-cut evidence of medi-

[33] Since the vast majority of terminations involve disabled workers, rather than disabled spouses or children (*Staff Report* 310–311) (36,900 compared with 2,200 in fiscal 1972), we shall also, for convenience, refer only to disabled workers, although the same procedures are followed in the other cases.

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cal recovery, the state agency will obtain information from the worker's sources of treatment and may also obtain a consultative examination of the worker by an independent physician (*id.* at 4A–5A).

A state agency "team" including a physician and a trained disability examiner reviews the evidence. If they believe that the worker is no longer disabled, he is informed of that tentative conclusion, is given a summary of the evidence upon which it is based and is provided at least ten days to respond, with additional time being provided if needed. At this, as at all stages of the disability claim process, the worker may be assisted by counsel or by some other representative, who is entitled to examine all evidence in the worker's file, including the medical reports.[34] Unlike respondent (see p. 8, *supra*), many workers make such further submission, which frequently result in a change of the state agency's tentative determination. Although the worker does not normally appear in person before the state agency, such appearances may be made and procedures exist for incorporating in the worker's file information and observations derived from such interviews (App. A, *infra,* pp. 5A–7A).

The state agency forwards its determination whether the worker is still disabled to SSA's Bureau of Disability Insurance, which reviews it for conformity with uniform national standards. As we have noted (see p. 21, *supra*), SSA may (but only infrequently does) itself determine that disability has

[34] The disabled person's direct access to the medical reports is limited, under current regulations, in accordance with accepted medical practice (see App. A, *infra*, p. 6A, n. 13).

ceased but may not make a determination more favorable to the worker than that made by the state agency (see App. A, *infra,* p. 8A). In cases where it would be inclined if permitted, to make a more favorable determination, SSA may and sometimes does return the case to the state agency for further consideration, which often results in a revised determination favorable to the worker (*id.* at 8A, n. 18).

When SSA determines (or accepts the state agency's determination) that disability has ceased, it so notifies the worker in writing, stating the basis of its "initial determination" and outlining the worker's right to seek further review. Upon such a determination, the worker receives benefits for two months following the month in which disability ceased (see p. 16, *supra*). In about half the cases the two-month grace period has already expired when the initial determination is made, so that benefits terminate immediately (App. A, *infra,* p. 9A; App. C, *infra,* p. 64A).[35]

[35] The Act authorizes the Secretary to "suspend" the payment of benefits pending inquiry by the state agency as to cessation of disability. 42 U.S.C. 425. Unlike the suspension procedures involved in *Richardson* v. *Wright*, *supra*, the current procedures provide for "suspension" of benefits in a limited category of cases, but only after the worker has had a pre-termination hearing. See CM §§ 6706, 6707; DISM §§ 265.1D 265.2. This authority may be used if, because of the date of cessation of disability, overpayments are already being made or are imminent. In practice, however, benefits are seldom suspended, and it occurs primarily in cases where the worker has returned to work, rather than in cases of medical recovery. In some cases, moreover, payment of benefits are suspended at the request of the beneficiary (see CM § 6736.7), who may wish to avoid responsibility for receipt of overpayments while his entitlement to benefits is in doubt. Respondent's benefits were not suspended, and the suspension procedures are not directly in issue here.

Following an adverse initial determination, a worker may request "reconsideration," in which event a different team at the state agency will review the record *de novo,* considering any additional evidence submitted by the worker or obtained by the state agency itself (*e.g.,* an additional medical examination). The state agency's decision on reconsideration is reviewed by SSA as in the case of initial determinations. Decisions on reconsideration are typically made within two to four months of a request for reconsideration (App. A, *infra,* pp. 9A–11A).

If the decision on reconsideration is adverse, the worker may obtain an evidentiary hearing before an SSA administrative law judge, at which the worker may (but need not) appear personally, present new evidence and subpoena witnesses. These hearings are non-adversary in character: SSA is not represented by counsel or other staff, and the judge's determination is based on the evidence in the worker's file, which the judge considers *de novo,* and such other evidence as the worker submits or the judge himself secures (*e.g.,* an additional medical examination). Because of the enormous workload imposed under the various programs administered by SSA, which has substantially enlarged the backlog of hearing requests (see pp. 22–24, *supra*), it now takes between ten and eleven months between a request for hearing and a decision (App. A, *infra,* pp 11A–12A).

If such a post-termination evidentiary hearing results in an adverse decision, the worker may request discretionary review by SSA's Appeal Council, which

may review the record *de novo* and may receive additional evidence (*id* at 12A–13A). After an adverse decision or denial of review by the Appeals Council, the worker may obtain judicial review. The district court, unlike all prior levels of review, is required to treat findings as conclusive if they are supported by substantial evidence (*id* at 13A–14A).

The great bulk of investigations of possible cessation of disability conducted pursuant to the pre-termination hearing procedure in issue here, result in initial determinations that the worker's disability has continued: about 120,000 out of about 155,000 initial determinations in fiscal 1973—more than 75 percent (*id.* at 2A, n. 3). Moreover, only a relatively small proportion of determinations that disability has ceased are "reversed" on post-termination review.

Thus, of about 35,000 adverse initial determinations in fiscal 1973, in only about 9,000 (25 percent) was reconsideration sought; in about 40 percent of reconsiderations in initial disability cases the decision is favorable to the worker (*id.* at 10A, 11A, n. 21).[36] Of the 5,600 adverse decisions after reconsideration in disability cessation cases, in only 1,900 (34 percent) was a hearing requested; after hearing in initial disability cases in about 40–50 percent—in many of which the worker did not appear personally—the decision is favorable to the worker (*id.* at 11A, 12A, n. 24). The Appeals Council ruled in the workers favor in about twelve percent of all disability cases it reviewed in fiscal 1973 (*id.* at 13A).

[36] Data for initial disability cases is thought by SSA to be reasonably representative in this regard of the pattern in termination cases.

Although the data for all stages of the review process are not precisely comparable, these figures indicate that only in about fifteen percent of the initial determinations of cessation of disability does post-termination review result in a decision favorable to the worker. Most of these "reversals," moreover, occur at the reconsideration stage, which is conducted under essentially the same procedures as the typical pre-termination inquiry, *i.e.*, on a paper record without personal appearance of the worker and without confrontation or cross-examination of witnesses.

E. RETROACTIVE ADJUSTMENTS OF UNDERPAYMENTS AND OVERPAYMENTS

If, at any point after the payment of benefits has been terminated, it is determined (whether on reconsideration, after a hearing, or on judicial review) that the worker's disability continued beyond the date of cessation established in the initial determination, then the worker is entitled to retroactive payment of benefits in accordance with the subsequent determination. Cf. 42 U.S.C. 423(b).

On the other hand, if a beneficiary receives any benefits to which he is later determined not to be entitled, the Act authorizes the Secretary to reduce any other payments to which the beneficiary is entitled, or to require the beneficiary to refund the overpayment (42 U.S.C. 404(a)(1)), unless the beneficiary is "without fault" and such adjustment or recovery would defeat the purposes of the Act or "would be against equity and good conscience." 42 U.S.C. 404(b). See generally 20 C.F.R. 404.501–404.515. In many cases a beneficiary

who is eventually found to be no longer disabled would be "without fault" for any receipt of benefits in the interim or otherwise not liable for overpayments. In addition, since many such beneficiaries have limited financial resources, there is limited practical likelihood that overpayments can be recovered, particularly since there is frequently no opportunity to withhold portions of other payments and the amounts may not justify litigation.

II

THE PROCEDURES FOR TERMINATION OF SOCIAL SECURITY DISABILITY BENEFITS SATISFY DUE PROCESS REQUIREMENTS

The issue in this case is the constitutionality of the procedures by which Social Security disability benefits are terminated when, because of changes in the medical condition of the beneficiary, his disability has ceased. The lower courts held that the procedures are unconstitutional because they do not provide an evidentiary hearing before, rather than after, the benefits are terminated. The courts thus extended to the termination of Social Security disability insurance payments the procedures that this Court held in *Goldberg* v. *Kelly*, 397 U.S. 254, are constitutionally required for the termination of state welfare benefits.

We submit that the procedures used in terminating Social Security disability payments satisfy due process. The Social Security disability program is sufficiently different from the state welfare program involved in *Goldberg* v. *Kelly* to permit different pro-

cedures under the two programs. The procedures for terminating Social Security disability benefits provide an adequate and fair opportunity for a beneficiary to submit all relevant information necessary to enable the Social Security Administration to make an informed and reliable judgment whether the disability has ceased. Indeed, respondent apparently acknowledged this when, prior to the initial decision by the state agency that he was no longer disabled, he declined to submit additional material on the ground that the state agency already had "enough evidence" to make a decision (see p. 8, *supra*).[37]

The adequacy of the procedures for terminating disability benefits cannot be determined in a vacuum, but must take account of the complexity and magnitude of the Social Security disability program, the vast number of termination proceedings now conducted, and the effect upon the program if an evidentiary hearing were required in every case before benefits could be terminated. "The [Social Security] system's administrative structure and procedures, with essential determinations numbering into the millions, are of a size and extent difficult to comprehend. But * * * '[s]uch a system must be fair—*and it must work.*'" *Richardson* v. *Perales, supra,* 402 U.S. at 389

[37] The correctness of SSA's initial determination that respondent is no longer disabled is not before the Court. That determination is not subject to judicial review except in accordance with 42 U.S.C. 405(g), and respondent has not taken the necessary steps to obtain such review (*i.e.*, seeking reconsideration, a post-termination hearing, and Appeals Council review (see App. A, *infra*, pp. 9A–13A).

(emphasis supplied). The procedures by which disability payments are now terminated are fair and they work.

The starting point for determining the constitutionality of these procedures is the settled proposition "that the interpretation and application of the Due Process Clause are intensely practical matters and that 'the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.' *Cafeteria Workers* v. *McElroy,* 367 U.S. 886, 895 (1961)." *Goss* v. *Lopez,* No. 73–898, decided January 22, 1975, slip op. at 12. "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Morrissey* v. *Brewer,* 408 U.S. 471, 481.

Accordingly, a resolution of a procedural due process claim requires a discriminating analysis of the relevant interests at stake. Compare, *e.g., North Ga. Finishing, Inc.* v. *Di-Chem, Inc.,* No. 73–1121, decided January 22, 1975, with *Mitchell* v. *W. T. Grant Co.,* 416 U.S. 600. While "*some* kind of notice and * * * *some* kind of hearing" constitute the fundamental requisites of due process (*Goss* v. *Lopez, supra,* slip op. at 13) (emphasis in original), "the timing and content of the notice and the nature of the hearing will depend on appropriate accommodation of the competing interests involved. *Cafeteria Workers* v. *McElroy, supra,* [367 U.S.] at 895; *Morrissey* v. *Brewer, supra* [408 U.S.] at 481." *Ibid.*

The Court has identified three general interests that must be assessed in determining the constitutional

sufficiency of procedures for denying or terminating constitutionally-protected interests. They are: first, the nature of the property (or liberty) interest of which a person is assertedly being deprived (cf., *e.g., Wolff* v. *McDonnell,* No. 73–679, decided June 26, 1974, slip op. 19);[38] second, the risk of an erroneous deprivation of such interest through the procedures used (*e.g., Goss* v. *Lopez, supra,* slip op. at 14–16); and third, the administrative burdens and costs that particular procedural requirements would entail. *Id.* at 17.

The procedures the Secretary follows in terminating Social Security benefits—under which the beneficiary is fully informed of the reasons for the proposed termination and given the opportunity to submit any material he wishes relating to the continued existence of the disability, but an evidentiary hearing is held only after the initial termination of benefits has been made—appropriately accommodate the interests involved in the operation of the Social Security disability program, and therefore satisfy due process.

[38] In rejecting contentions that particular laws or administrative actions denied either substantive or procedural due process, the Court has assumed that the statutory entitlements to disability insurance benefits and other Social Security benefits constitute "property" under the due process clause of the Fifth Amendment. *E.g., Flemming* v. *Nestor,* 363 U.S. 603, 611; *Richardson* v. *Perales, supra,* 402 U.S. at 401; *Richardson* v. *Belcher, supra,* 404 U.S. at 80–81. We do not here contend that respondent's asserted entitlement to continued receipt of disability insurance benefits is not a "property" interest protected against arbitrary deprivation by the due process clause. Rather, we contend that the existing procedures provide all the process that is constitutionally due before respondent can be initially deprived of that interest.

A. THE NATURE OF THE WORKER'S INTEREST IN SOCIAL SECURITY DISABILITY INSURANCE BENEFITS

The disability benefits involved in this case are significantly different from the welfare benefits involved in *Goldberg* v. *Kelly, supra,* upon which the courts below relied. That case involved welfare benefits payable to "needy families with children" (42 U.S.C. 601, *et seq.*), or to "any person unable to support himself or to secure support from other sources." 397 U.S. at 256, n. 1. The Court observed that the " 'one overpowering fact' " was that, " '[b]y hypothesis, a welfare recipient is destitute, without funds or assets,' " and faces " 'brutal need.' " *Id.* at 261. The Court concluded that (*id.* at 264; emphasis in original, footnote omitted):

> the crucial factor in this context—a factor not present in the case of * * * virtually anyone else whose governmental entitlements are ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate. His need to concentrate upon finding the means for daily subsistence, in turn, adversely affects his ability to seek redress from the welfare bureaucracy.

In sum, it was because " '[t]he stakes are simply too high for the welfare recipient' " (*id.* at 266) that the Court concluded that an evidentiary pre-termination hearing was required.

By contrast, Social Security disability benefits are not based upon need (see pp. 15–19, *supra*).[39] While many recipients of such benefits may rely heavily upon them, they are not "by hypothesis" (*Goldberg* v. *Kelly*) "the last source of support available, aside from charity * * *." *Arnett* v. *Kennedy,* 416 U.S. 134, 191 (White, J., concurring in part). Like recipients of other governmental payments subject to termination, a disability beneficiary "may well have independent resources to overcome any temporary hardship, and he may be able to secure a job * * *. Alternatively, he will be eligible for welfare benefits." *Arnett* v. *Kennedy, supra,* 416 U.S. at 169 (Powell, J., concurring in part). In addition to the "basic floor of need" provided by the welfare system (*id.* at 202 (White, J., concurring in part)), the worker may be entitled to benefits under other public and private programs (see pp. 17–18, *supra*), and other family members may have jobs or other income.

In short, the beneficiary "is not totally without prospect for some form of support during the period between the pretermination and final hearing on appeal, though it may not be equivalent" (*id.* at 201–202 (White, J., concurring in part)) in amount or continuity to his prior disability benefits. Indeed, while the record in this case does not show whether

[39] Under the SSI program (see pp. 22–24, *supra*), in which need is a factor, the statute provides for an oral evidentiary hearing (held by SSA) concerning a determination about eligibility (42 U.S.C. (Supp. III) 1383(c)), and SSA terminates SSI benefits only after such a hearing, if requested, 20 C.F.R. 416.1336(c), 40 Fed. Reg. 1512; see *Staff Report* 346.

respondent has other income or assets, he professed to be able to "get by" without Social Security benefits (A. 14).[40] He did not seek reconsideration of SSA's determination that he was no longer disabled although, had he done so, that procedure held out the greatest likelihood for a prompt correction of any error in the determination (see p. 31, *supra*).[41]

B. THE RISK OF AN UNRELIABLE DECISION RESULTING FROM THE EXISTING PRE-TERMINATION HEARING PROCEDURE

The rules of procedure required by due process "may be shaped by consideration of the risks of error" (*Wolff* v. *McDonnell, supra,* slip op. at 26), in part because "[t]he greater the level of deprivation which may flow from a decision, the less one may tolerate the risk of a mistaken decision * * *." *Arnett* v.

[40] The record does not indicate whether respondent has sought or received other benefits, such as public assistance or state aid to the needy disabled, nor does it reveal whether he was eligible for or sought SSI benefits for the needy disabled (see pp. 22–24, *supra*).

[41] Because "the possible length of wrongful deprivation of * * * benefits is an important factor in assessing the impact of official action on the private interests * * * the rapidity of administrative review is a significant factor in assessing the sufficiency of the entire process." *Fusari* v. *Steinberg*, No. 73–848, decided January 14, 1975, slip op. at 10–11. While no precise data are available as to disability terminations, the data as to all other disability determinations indicate that, if respondent had promptly sought reconsideration, he would have had his claim considered anew, along with any new evidence he chose to submit, by different people. The vast majority of "reversals" occur at the reconsideration stage, where decisions are typically made within a few months of the request for reconsideration (see p. 31, *supra*).

Kennedy, supra, 416 U.S. at 201 (White, J., concurring in part). That risk depends in part upon "the nature of the issues at stake" (*Mitchell* v. *W. T. Grant Co., supra,* 416 U.S. at 609), whether they "lend themselves to documentary proof" (*ibid.*), and the nature and extent of consideration they receive at the pre-termination stage (*id.* at 616–617).

By definition, disability terminations involve persons who have already been found to be "disabled" within the meaning of the Act on the basis of specific facts. Termination of disability benefits will ordinarily result only when there has been some distinct change of circumstances. As we have noted (see p. 26, *supra*), medical recovery is the usual change underlying disputed terminations.[42]

This Court has observed that, unlike the welfare eligibility proceedings involved in *Goldberg* v. *Kelly, supra,* where the decision turns on a medical judgment about the worker's condition and capabilities, "the specter of questionable credibility and veracity is not present," even though there may be "professional disagreement with the medical conclusions * * *." *Richardson* v. *Perales, supra,* 402 U.S. at 407.[43]

Medical recovery terminations, like the initial determinations of disability, rely heavily upon "routine,

[42] This case involves termination because of medical recovery, and does not present any question concerning the relatively rare terminations where a beneficiary would not cooperate or could not be located (see p. 26, *supra*, n. 31).

[43] In return-to-work cases, the determinations are frequently based upon employers' wage reports and other routine filings made subject to penalties for false statements. 26 U.S.C. 6674, 7204; 42 U.S.C. 408; see 18 U.S.C. 1001.

standard, and unbiased medical reports by physician specialists concerning a subject whom they" have examined (*id.* at 404), the general reliability and probative value of which reports have been "uniformly recognized." *Id.* at 405.[44] In addition, "[t]he vast workings of the social security administrative system make for reliability and impartiality in the consultant reports" (*id.* at 403), reflecting the fact "that the agency operates essentially, and is intended so to do, as an adjudicator and not as an advocate or adversary." *Ibid.*

More specifically, as in respondent's case, the worker is given several meaningful and effective opportunities before termination of benefits to demonstrate that he still is disabled. The efficacy of these procedures is shown by the fact that approximately 80 percent of the continuing disability examinations result in determinations that the worker is still disabled (see p. 31, *supra*).

If the state agency has tentatively decided that disability has ceased, it gives the worker a summary of the basis for that conclusion, tailored to his case and prepared so as to be understandable (App. A, *infra,* pp. 6A–7A), and an ample opportunity to respond and submit additional evidence (*ibid*). Such further submissions are frequently made and often result in a determination favorable to the worker (see *id.* at 7A, n. 14). Probably more often than in welfare

[44] We do not contend "that the 'credibility and veracity' of doctors and employers can never be in issue in a disability case" (*Richardson* v. *Wright, supra,* 405 U.S. at 219 (Brennan, J., dissenting)), for procedural rules are designed for the generality of cases, not the rare exceptions.

cases, workers in disability termination cases are assisted by counsel or some other representative at this and all other stages (see *id.* at 6A, n. 12). The determination whether disability has terminated is made by a team of dispassionate, trained professionals applying detailed guidelines and standards, not by caseworkers who may have had adverse personal confrontations with the beneficiary. Before adopting a state agency's adverse decision, SSA reviews it to insure conformity with uniform national standards (see *id.* at 8A).

These pre-termination procedures are suitably "tailored to the capacities and circumstances of those who are to be heard." *Goldberg* v. *Kelly, supra,* 397 U.S. at 268–269. Unlike welfare recipients, disabled workers usually have substantial recent employment experience (see p. 16, *supra*),[45] and also have sufficient educational experience so that "[w]ritten submissions are [not] an unrealistic option for most recipients * * *." *Goldberg* v. *Kelly, supra,* 397 U.S. at 269.[46]

[45] A study based on data for 1965 found that only 53 percent of the severely disabled persons receiving public assistance on account of their disabilities were employed at the onset of those disabilities, whereas 91 percent of disabled worker beneficiaries under the Social Security Act had been so employed. Brehm, *The Disabled on Public Assistance*, in Department of Health, Education and Welfare, *Social Security Survey of the Disabled: 1966, Rep. No. 9*, at 5 (1970).

[46] In 1971, 86 percent of workers under 30 who were awarded benefits, 62 percent of those between 45 and 49, and 48 percent of those 60 or over had attended school to at least the ninth grade. Fifteen percent of the beneficiaries under 30 had attended college for at least one year. *Staff Report* 320.

The substantial reliability of the existing procedures for making initial determinations that disability has ceased is suggested by the fact that as to only a small number—probably about fifteen percent—is it held at later stages of review that the worker is still disabled (see p. 31, *supra*).[47]

Moreover, those cases cannot all be regarded as "reversals" in the usual sense. Cf. Dixon, *supra,* at 33, 41. The fact that a decision favorable to the worker is made after an initial determination that the worker is no longer disabled does not necessarily mean that the earlier decision was "erroneous." The program is operated on an open-file basis, and a worker may continuously update his file by submitting new evidence (see pp. 30–31, *supra*).[48] Moreover, borderline cases frequently turn not on factual disputes but on questions of judgment about the effect of physical limitation or discomfort on a worker's ability to perform suitable tasks. Indeed, as with initial disability claim

[47] For example, in fiscal 1973, there were 575,300 initial determinations adverse to workers' initial disability claims, but claims were allowed as to only 61,900 on reconsideration, only 24,100 after evidentiary hearings, only 1,918 after review by the Appeals Council (318 after remand from the courts), and only 172 by the courts. *Staff Report* 308–311. Thus, a total of 88,090 claims were allowed after post-termination review, which constituted fifteen percent of claims initially denied that year.

[48] The fact that more time has elapsed between the initial determination and the post-hearing decision than the initial determination and the decision on reconsideration (see App. A, *infra*, p. 11A, n. 22, p. 12A, n. 23) tends to inflat the post-hearing "reversal" rates to some degree. See Dixon, *supra*, at 41.

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proceedings, the "reversal" rate "attests to the fairness of the system and refutes the implication of impropriety." *Richardson* v. *Perales, supra,* 402 U.S. at 410.

The lower courts in this case held the existing pre-termination procedures constitutionally deficient because, despite their evident reliability, they do not include the opportunity for the beneficiary to be heard in person and to confront and cross-examine witnesses providing the evidence upon which the termination of benefits is based (Pet. App. 6A, 10A–11A), elements required in the welfare context by *Goldberg* v. *Kelly, supra.* There is nothing to indicate, however, that those procedural rights would improve to any significant extent the already substantial reliability of the existing procedures.

Given the nature of the issues and the evidence relied upon, the right to confront and cross-examine witnesses (frequently physicians), even if practicable, is not likely to aid the worker appreciably because of the inherent reliability of the physicians' reports (see pp. 40–41, *supra*).[49] Indeed, respondent has not suggested any respect in which this right would have assisted him.

[49] In requiring that the Secretary give a recipient of Social Security disability benefits a pre-termination evidentiary hearing "in the nature of that required for welfare beneficiaries" by *Goldberg* v. *Kelly, supra* (Pet. App. 17A–18A), the courts below did not clearly indicate whether they were holding that the doctors who provide medical reports must be produced for cross-examination at such a hearing. While *Goldberg* v. *Kelly* required that welfare beneficiaries "be given an opportunity to confront and cross-examine the witnesses relied on by the department" (397 U.S. at 270), the Court indicated in *Perales* that the doctors themselves need not routinely be produced, even in a full-scale post-termination evidentiary hearing. 402 U.S. at 406–407. As the Court observed in *Perales*, a requirement of live medical testimony at a substantial number of hearings (regardless of who holds the hearings) would not only place "a substantial drain on the trust fund," because of the larger consultant fees that would be required, but, perhaps more importantly, would also impose "a substantial drain * * * on the energy of physicians already in short supply." *Id.* at 406.

With respect to a personal appearance by the worker—which is possible under present procedures (see p. 28, *supra*), but which respondent did not request—the minor significance of this element is shown by the large number of cases in which initial adverse decisions are reversed in reconsideration proceedings, in which the worker ordinarily does not appear personally (see p. 31, *supra;* App. A, *infra,* p. 12A, n. 24).[50] This conclusion is further supported by the fact that relatively few beneficiaries whose terminations are upheld on reconsideration request an evidentiary hearing (see p. 31, *supra*).

C. THE SUBSTANTIAL ADMINISTRATIVE BURDEN AND COSTS OF REQUIRING EVIDENTIARY HEARINGS PRIOR TO TERMINATION OF SOCIAL SECURITY DISABILITY INSURANCE BENEFITS

In deciding procedural due process issues, the Court has repeatedly emphasized that the rules of procedure must "be shaped by the consequences which will follow their adoption." *Wolff* v. *McDonnell, supra,* slip

[50] While the rate of favorable decisions appears to be somewhat greater for all who seek hearings (see p. 31, *supra*), it is not known to what extent that is attributable to submission of new evidence, worsening of the worker's condition due to passage of time, personal appearance of the worker, or other reasons.

op. at 26. For example, confrontation and cross-examination are not required if the proceedings would "be longer and tend to unmanageability." *Id.* at 25. See, also, *Gerstein* v. *Pugh,* No. 73–477, decided February 18, 1975, slip op. at 18, n. 23.

In terminating disability payments, "a requirement of a prior evidentiary hearing would impose additional administrative costs, create delay, and deter warranted" terminations of benefits. *Arnett* v. *Kennedy, supra,* 416 U.S. at 168 (Powell, J., concurring in part). "To impose in each * * * case even truncated trial type procedures might well overwhelm administrative facilities in many places and, by diverting resources, cost more than it would save in * * * [program] effectiveness." *Goss* v. *Lopez, supra,* slip op. at 17. Speaking with particular reference to the 20,000 disability claim hearings then held annually, the Court referred in *Richardson* v. *Perales, supra,* 402 U.S. at 406, to the "sheer magnitude" of the administrative burden that would result if reliance on a paper record were impermissible.[51]

[51] Indeed, in *Goldberg* v. *Kelly, supra,* the Court took note of the fact that "[s]ummary adjudication protects the public fisc by stopping payments promptly upon discovery of reason to believe that a recipient is no longer eligible * * * [and] conserves both the fisc and administrative time and energy by reducing the number of evidentiary hearings actually held." 397 U.S. at 265. The Court also noted that the requirement of a prior public hearing involves greater expense to the extent that benefits paid to ineligible recipients pending the hearing and decision cannot be recouped because the recipients are judgment proof. *Id.* at 266. While these governmental interests were "not overriding in the welfare context" (*ibid.*), because of the unique importance of welfare benefits to the recipients (see p. 37, *supra*), the Court did not suggest that they should not be given greater effect in other contexts.

The administrative burdens and costs apprehended by the Court in *Perales* would be even more severe if the full pre-termination hearing requirements of *Goldberg* v. *Kelly* were imposed upon the Social Security disability insurance program. Operating through an already complex administrative structure, that program has been growing rapidly,[52] and is expected to expand at an accelerated rate, particularly if unemployment remains substantial. *Staff Report* 15. In mid-1974, state agencies were making more than 60,000 disability determinations a week (in both Social Security and SSI cases). *Id.* at 3.

In coping with this burgeoning caseload, SSA has continually attempted "to evolve procedures to meet needs as they arise." *Richardson* v. *Wright, supra,* 405 U.S. at 209. The pre-termination hearing requirements imposed here, however, could not be handled by adjusting existing procedures, but would instead require a fundamental restructuring of the existing institutions. It would impose heavy administrative and financial strains upon already-overburdened agencies.

As we have noted, the Act requires that determinations of cessation of disability because of medical recovery must initially be made by the state agencies (see pp. 19–21, *supra*). Those agencies, however, are presently not equipped to hold evidentiary hearings. Their staffs consist of doctors, disability examiners

[52] The number of disabled workers and dependents receiving benefits increased from 750,000 in 1960 to about 3.5 million in 1973. *Staff Report* 3.

and vocational counselors, who already have an expanding heavy caseload.[53] They do not have people who can properly serve as hearing examiners. Those agencies typically operate out of a central office, so that expensive and time-consuming travel would be required either by the worker or by the state agency staff. A hearing structure would have to be constructed from the ground up in each state, an inevitably time-consuming and costly process.

SSA has recently undertaken a test project to determine the feasibility and cost of providing a limited form of personal hearing on reconsideration at the state agency level. At present, however, SSA does not know how workable or expensive such a procedure would be. But, as the Court observed in *Perales,* the system not only must be fair, "it must work." 402 U.S. at 399.

The alternative procedure of having SSA itself hold a pre-termination evidentiary hearing is scarcely more practical. (There is a substantial question whether that would be permissible under the Act[54]). SSA district offices, although numerous and conveniently located,

[53] In fiscal 1973, all state agencies employed a total of approximately 4,700 employees handling disability cases and made more than 900,000 initial determinations in such cases. *Staff Report* 162.

[54] As we have noted (see pp. 19–21, *supra*), in medical recovery cases the determination whether a worker's disability has continued or ceased must be made by the state agency, and SSA is not permitted on review of such a state agency determination, to make a determination in the worker's favor. 42 U.S.C. 421(a)(c). Only after a post-termination hearing pursuant to 42 U.S.C. 405(b) may SSA decide in favor of the worker. See 42 U.S.C. 421(d). If there were a right to a pre-termination hearing held by SSA, and SSA's decision after such a hearing were

do not have on their staffs persons with the training and experience necessary to make judgments about medical recoveries or vocational issues.

SSA's limited number of administrative law judges and hearing examiners are already overburdened with their existing and unavoidable caseload under the Social Security, SSI and black lung programs (see pp. 22–24, *supra*),[55] and significant delays already exist between requests for hearings and decisions in those cases (see App. A, *infra,* pp. 11A, n. 22, 12A n. 23). Despite the growth of SSA's Bureau of Hearings and Appeals,[56] as of December 1974 it had a backlog of

to be dispositive, the state agency's adverse determination would not necessarily be given effect as "the determination of the Secretary" as 42 U.S.C. 421(a) requires. Additional problems would be presented if the state agency were required to accept the determination made by SSA after the latter held a hearing. Cf. *Morgan* v. *United States*, 298 U.S. 468, 481. ("The one who decides must hear.")

[55] As the number of disability beneficiaries has increased, there has been a corresponding surge in the use of the administrative decision-making process:

	Fiscal year—				
	1970	1971	1972	1973	1974*
Total decisions	904,600	1,118,100	1,231,700	1,249,500	1,423,600
Initial	765,800	952,900	1,016,100	1,024,500	1,162,600
Reconsideration	97,700	116,800	159,500	156,800	188,400
Hearings	31,300	37,100	43,900	53,100	55,600
Appeals council	8,800	10,000	11,000	13,500	15,700
Court decisions	1,000	1,300	1,200	1,600	1,300
Court actions filed**	1,339	1,561	1,820	2,268	2,534

Source: *Staff Report* 308
* 1974 figures compiled by SSA subsequent to *Staff Report*
** Calendar year figures, compiled by SSA.

[56] The Bureau has grown from having a budget of $21.8 million and 1,278 employees in 1970 to a budget of $43 million and 2,044 employees in 1974. *Staff Report* 31.

102,129 hearing requests,[57] the vast majority involving disability issues. SSA anticipates that even under existing programs and procedures this backlog will increase to about 130,000 at the end of fiscal 1975. SSA's efforts to increase its existing staff of hearing officers [58] have thus far been hampered by the difficulty in obtaining rapidly a sufficient number of qualified candidates satisfying Civil Service requirements. But even an enlarged corps of hearing officers all operating at maximum efficiency [59] would be hard-pressed to reduce the existing backlog, now estimated by SSA to

Requests for Hearing Pending as of December 8, 1974

[57] Retirement and survivors insurance benefits	1,701
Disability insurance benefits	45,048
Black lung benefits	33,888
Supplemental security income (mostly disability)	18,035
Disabled widow's/widower's insurance benefits	2,262
Health insurance benefits	1,195
Total	102,129

[58] Hearing Personnel on Duty as of January 1975:

	ALJ's[a]	BL ALJ's[b]	SSI HE's[c]	Total
As of Nov. 15, 1974	410	110	92	612
Projected as of July 1, 1975	[d]395	125	170	690

[a] Administrative Law Judges—GS 15 $29,818—$36,000.

[b] Temporary Black Lung Administrative Law Judges (authorized to handle only Black Lung cases)—GS-14 $25,581—$33,258.

[c] SSI Hearing Examiners (authorized to handle only SSI cases)—GS-13 $21,816—$28,359.

[d] While SSA expects to appoint 15 additional ALJ's, it anticipates attrition of 30, for a net loss of 15.

[59] According to SSA, experienced hearing officers (after nine months on duty) dispose of 190 cases annually. When the present 612 hearing officers have all been on duty nine months, SSA will have the capability to dispose of 9,690 hearings per month. But some of the hearing officers are still in training, and others are just beginning to conduct hearings.

involve a delay of between ten and eleven months from hearing request to decision.[60]

The impact of a requirement of a pre-termination evidentiary hearing in all cases cannot be assessed precisely because one can only speculate about the number of beneficiaries who would seek such a hearing and the attendant delays and costs. The number would be substantial—25 percent of those who receive adverse initial determinations, or about 11,000 in fiscal 1976 (see App. C, *infra*, p. 63A) seems a reasonable estimate.[61] Moreover, some beneficiaries who now accept an adverse initial determination would be likely to request a pre-termination hearing if the effect would be to prolong the payment of benefits.[62]

[60] Complete elimination of such delay would be infeasible. In fiscal 1973, in 31.1 percent of the state agencies cases at the reconsideration stage and 42.7 percent of the cases at the hearing stage, a consultative medical examination was held. *Staff Report* 238. These examinations must be arranged at the convenience of both the physician and the worker. In addition, delay in disposition after a request for a hearing inevitably results from the normal constituents of an adjudicatory proceeding—*e.g.*, the need to schedule the hearing at the beneficiary's convenience, to secure the attendance of witnesses (if any), to file briefs, and to render a decision.

[61] A reasonable guideline is the fact that in recent years about 25 percent of workers sought reconsideration of initial determinations that they are no longer entitled to benefits (see p. 31, *supra*).

[62] An assumption that the number of beneficiaries who would request a pre-termination evidentiary hearing might exceed the number who would request post-termination review, perhaps encouraged in their persistence because of the prolonged payment of benefits resulting from a hearing request, is supported by the experience of the states with welfare terminations following the decision in *Goldberg* v. *Kelly*, *supra*, in March

Requiring SSA to provide such a substantial number (at least 11,000) of additional [63] hearings would have severe adverse consequences upon the functioning of the Social Security system. Depending on which cases were heard first, for a considerable period either the pre-termination disability cases would face

1970. As shown in the following table, the ratio between discontinuances of public assistance payments and disposition of hearing requests concerning such discontinuances altered significantly in the period following the decision, indicating a likelihood that hearings were being increasingly requested.

Period	A Number of public assistance cases where money payments were discontinued	B Number of hearing requests disposed of where the issue was the discontinuance of assistance	C Percentage of hearings (col. B / col. A x 100)
July to December 1970	403,070	5,000	1.2
January to June 1971	551,339	6,500	1.2
July toDecember 1971	772,588	9,354	1.2
January to June 1972	807,822	15,866	2.0
July to December 1972	953,807	19,442	2.0

Department of Health, Education and Welfare, *Fair Hearings in Public Assistance*, Publication Nos. 72-03257 (1972), 72-03253 (1972), 73-03253 (1973), 73-03257 (1973), 74-03257 (1973), Department of Health, Education, and Welfare, *Reasons for Discontinuing Money Payments to Public Assistance Cases, NCSS Rep. A-11*, Publication Nos. 72-03108, 72-03109 (quarterly).

If the rate differentials here are representative, they suggest that pre-termination evidentiary hearings would be requested at 1.67 times the rate of requests for post-termination review (*i.e.*, 1.67 is the amount by which the base rate of 1.2 hearing requests per 100 discontinuances must be multiplied to obtain the rate of 2.0). Thus, 11,000 post-termination reconsiderations would convert to 18,370 pre-termination hearings.

[63] In *Golberg* v. *Kelly*, the Court anticipated that, in addition to the pre-termination hearing there required, the existing right to an even more substantial post-termination hearing would continue. 397 U.S. at 266–267. It is not entirely clear, moreover, that a pre-termination hearing satisfying *Goldberg* v. *Kelly* would meet the constitutional standards for the hearing required before a person may be finally deprived of property.

substantial delays or other cases handled by the Bureau of Hearings and Appeals would face additional [64] delays. Insofar as the burden of delay was borne by the Social Security disability termination cases, many workers no longer eligible would receive trust fund payments that might never be recouped. On the other hand, other eligible claimants would be temporarily deprived of benefits for a more prolonged period [65] if the termination cases were heard first. Neither result is readily acceptable.

A pre-termination hearing requirement in Social Security disability insurance cases would entail substantial costs. Appendix C to this brief contains data estimating that the cost would be at least $15 million to $25 million annually at the current level of benefits, salaries and other costs. Such added costs would constitute a substantial drain on the trust fund and would represent funds that cannot be used to pay benefits to eligible disabled workers.

The disability trust fund—sustained by receipts from a special payroll tax—is already facing an actuarial deficiency, a situation likely to be worsened by prolonged unemployment, which results in increased claims for benefits and decreased revenues. *Staff Report* 4, 13–16, 332–344, 348–350. In view of the ever-

[64] As we have noted (see p. 51, *supra*), the current delay is about ten months between hearing request and decision.

[65] The majority of the cases heard by the Bureau under SSA's various programs involve initial claims for benefits, rather than terminations. This Court has never suggested that such claimants are entitled to receive benefits pending an appeal from an initial determination that they are ineligible. Cf. *Richardson* v. *Perales*, *supra*, 402 U.S. at 407.

escalating demands of other social programs, it cannot be lightly assumed that Congress will provide sufficient supplemental financial support for the disability program so that the beneficiaries will not bear directly any added costs of overpayments and administration.

If evidentiary hearings are required prior to termination of disability insurance payments, that requirement might also be extended to other Social Security programs, under which SSA terminates the benefits of more than 1,500,000 persons annually.[66] Requiring hearings in all those cases would increase the administrative and financial burdens upon SSA even more seriously.[67]

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[66] SSA estimates for fiscal 1976 the following volume of terminations or reductions of benefits under Title II of the Social Security Act alone for reasons other than death or attainment of age 65:

Termination event	*Estimated annual volume*
Attainment of age 18 or 22 of a child or student	500,000
Current year work report	400,000
Marriage, remarriage, or divorce of auxiliary beneficiary or survivor	200,000
Termination of benefits to a young wife or young widow due to attainment of age 18 of last entitled child on same earnings record	200,000
Cessation of full-time school attendance	150,000
Entitlement of Additional Beneficiary	40,000
No entitled child in care of young wife or widow	20,000
Total	1,510,000

[67] In *Richardson* v. *Wright*, *supra*, Mr. Justice Brennan estimated that, based on the smaller base of Title II terminations in 1969, there would be about 100,000 terminations under other Title II programs as to which a pre-termination evidentiary hearing might be required. 405 U.S. at 226.

* * * * *

A comprehensive congressional study of the Social Security disability programs recently concluded that "[t]here is a substantial question as to whether the multitiered Social Security appeals procedure can withstand the *current* workloads under Social Security and SSI, even if the present Black Lung situation is only a temporary aberration." *Staff Report* 5 (emphasis supplied). The study expressed concern "that any further enlargement of Social Security responsibilities may be 'the straw that breaks the camel's back.'" *Id.* at 9. Even if that gloomy assessment turns out to be somewhat overstated, it suggests the dangers in substantially augmenting the heavy existing administrative burdens of SSA.

Imposing on the termination of social security disability payments the procedures established by *Goldberg* v. *Kelly* for terminating state welfare benefits "would bring down too many procedures designed, and working well, for a governmental structure of great and growing complexity." *Richardson* v. *Perales*, *supra*, 402 U.S. at 410. The procedures now followed in terminating social security disability benefits are fair, and they work. They are the product of a continuing evolution of procedures "to meet needs as they arise." *Richardson* v. *Wright*, *supra*, 405 U.S. at 209. They should not be found constitutionally deficient on the basis of unfounded hypotheses that an untested system of oral evidentiary hearings prior to termination of benefits would be so markedly fairer and more

reliable as to justify the enormous attendant administrative burdens and costs.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX A

THE PROCEDURES FOLLOWED IN TERMINATING SOCIAL SECURITY DISABILITY INSURANCE BENEFITS

Because a worker's "disability" and entitlement to benefits may and frequently do change, a disabled worker's file is always "open" for new evidence and the Secretary has adopted procedures calling for "continuing disability investigations" to reexamine periodically a prior finding of disability.[1] When a worker is awarded benefits because of a disability, SSA informs the worker about the conditional nature of the determination and the continuing review of disability.[2]

[1] See 20 C.F.R. 404.1521, *et seq.* The continuing disability investigation procedures are contained in SSA's Claims Manual ("CM"), §§ T6260, *et seq.*, and §§ T6700, *et seq.* (see App. B, *infra*), and the Disability Insurance State Manual ("DISM"), §§ 350, *et seq.* (see Pet. App. 19A–75A).

[2] Thus, SSA's notification of entitlement to benefits is accompanied by a booklet (*Your Social Security Rights and Responsibilities: Disability Benefits*) (March 1974)) which states (p. 7) that

"[y]our eligibility ends if your condition improves so that you are capable of doing substantial gainful work. Your eligibility also ends if you return to substantal gainful work."

In cases where an improvement appears possible, the text of the letter notifying the claimant of an award provides in part (Award or Disallowance Notices, 8280.353):

"The evidence in your claim shows that your condition may soon improve. Therefore, we plan to get in touch with you about ———— to see if you are still eligible to receive disability benefits. To help us determine this, we may ask you to give us more information or to take a medical examination. If we find you are still disabled, your benefits will continue. But, if

In 1973, 160,627 such continuing disability investigations were made, resulting in 37,926 determinations that disability had ceased. *Staff Report* 347.[3] The principal reasons for making such investigations in particular cases are that a medical reexamination had previously been scheduled (as here),[4] an employer has

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our review shows you are no longer disabled, your benefits will be stopped.

If you return to work before we contact you or you have already returned to work when you receive this notice, you should notify us immediately. Then we can review your claim in time to prevent any incorrect payments." (Emphasis in original.)

A similar notification is sent to beneficiaries who are hospitalized at the time of the award.

[3] The detailed statistics are as follows (*Staff Report* 347):

TABLE 88.—*Continuing disability determinations, year 1973*

Why investigation was made	All cases [1]	Percent of total	Cessations	Percent of total	Continuances	Percent of total
Total	160,627	100.0	37,926	100.0	122,701	100.0
Medical re-exam diary	65,143	40.7	11,949	31.6	53,194	43.3
Trial work diary matured	9,172	5.7	7,300	19.2	1,872	1.5
Earnings posted-medical re-exam set	1,043	.6	399	1.1	644	.5
Earnings posted-medical re-exam not set	26,346	16.4	4,062	10.7	22,284	18.2
Voluntary report of return to work—medical recovery expected	7,690	4.8	4,512	11.9	3,178	2.6
Voluntary report of return to work—medical recovery not expected	20,561	2.8	4,856	12.8	15,705	12.8
Voluntary report of improvement or hospital discharge	4,869	3.0	551	1.5	4,318	3.5
Voluntary report of work stoppage	7,243	4.5	56	.1	7,187	5.9
Request for reconsideration, reopening, or higher appeal	5,367	3.3	3,380	8.9	1,987	1.6
Individual made his own payee, and other reason	10,873	6.8	624	1.6	10,249	8.4
Rehabilitation notice	2,320	1.4	237	.6	2,083	1.7

[1] Cessations and continuances.

[4] CM § 6705; DISM § 351. Future medical reexaminations are scheduled in those cases in which current medical evidence indicates that the beneficiary's disability may later cease. CM § 6705(f); DISM § 351.

reported earnings by the worker,[5] or the worker has "voluntarily" reported that his condition has improved or that he has returned to work.[6]

As we have noted, the Act requires that determinations about whether a worker is still disabled must be made in the first instance by the state agency (see pp. 19–21, *supra*). As a result, different procedures are followed at the initial stages in cases of possible medical recovery than in cases involving return to work or other causes of termination of benefits.

1. CONTINUING DISABILITY INVESTIGATIONS CONCERNING MEDICAL RECOVERY

(*a*) *Procedures prior to termination of benefits*

In cases involving possible medical recovery, as here, the investigation is made by the appropriate state agency. CM § 6705.1; DISM § 353.2.[7] The disability determination is made by a team composed of

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[5] Employers are required by the Internal Revenue Code (26 U.S.C. 3101, *et seq.*) and regulations (26 C.F.R. 601.401(b)(3)) to report quarterly to the Internal Revenue Service wages paid to all employees. The Service forwards these wage reports to SSA, whose Bureau of Data Processing posts each wage earner's quarterly earnings to his Social Security account.

[6] The regulations require a disability beneficiary to notify SSA promptly if his condition improves, if he is discharged from a hospital, if he engages in any work activity, or if his earnings from work increase. 20 C.F.R. 404.1531; cf. 42 U.S.C. 408(d) and 423(d)(5).

[7] In the small number of cases (see p. 2A, *supra*, n. 3), in which a worker was scheduled for medical reexamination and SSA receives evidence of work activity, it will have the return-to-work issues developed initially by the SSA district office, pursuant to the procedures described below (see pp. 14A–17A, *infra*), before the case is forwarded to the state agency for any necessary further proceedings concerning medical recovery. DISM § 353.2.

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a physician and a non-medical person trained in disability evaluation, using a consulting physician who examines the worker if the team deems it necessary.

The agency communicates with the disabled worker, typically by mail (in which case he is sent a questionnaire to be completed and returned (Pet. App. 72A–75A)), or by telephone, and asks him to furnish information concerning: his present condition, his belief as to whether he is able to return to work, any current medical restrictions, the sources of treatment for his disability, the nature and extent of any employment in the past year, and any vocational rehabilitation services he is receiving. CM § 6705.1; DISM § 353.3. The beneficiary is also invited to submit any additional information relevant to the determination of his continuing entitlement. If necessary, the SSA district office will assist the state agency in obtaining the desired information from the beneficiary. CM § 6705.1 (c); DISM § 353.3B.[8]

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[8] If a worker fails to cooperate by submitting evidence of continuation of his disability or presenting himself for a medical examination, a determination of cessation of disability may be made for that reason (20 C.F.R. 404.1539(c)), but only if (DISM § 356.1A):

"(1) a continuance issue cannot be resolved with the evidence of record, (2) efforts to have the beneficiary cooperate in obtaining the necessary evidence have been appropriate and reasonably complete but unsuccessful, and (3) the evidence indicates that in spite of such efforts the beneficiary's failure to cooperate will continue."

As outlined in DISM § 356.1, however, before making such a determination the state agency and the district office must make (and document) "every reasonable effort" to communicate with the worker personally, to secure his cooperation, and to resolve the issue on the available evidence, and must tell the beneficiary that unless he cooperates by a specified date his

Unless there is clear-cut evidence of medical recovery,[9] the state agency will attempt to obtain information from medical sources regarding the beneficiary's current condition. DISM § 353.2B. It solicits such medical information from the beneficiary's treating sources, and obtains a consultative medical examination when appropriate (such as when there is a conflict between information furnished by the beneficiary or his physician and that obtained from other sources) or necessary (such as when there is no current medical evaluation of the beneficiary). DISM § 353.4.[10]

Upon completion of its investigation of the beneficiary's current condition, the state agency tentatively determines whether the beneficiary's disability has ceased and, if so, the month in which it ceased. DISM §§ 353.2E, 353.5.

If, however, the medical evidence conflicts with the beneficiary's assessment of the severity of his impairment or the date of its cessation, before the state agency's tentative determination becomes final the beneficiary is: (1) informed of the proposed adverse

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benefits might be terminated. Similar stringent procedures apply when the worker cannot be located. DISM § 356.2. In either case, moreover, if the worker subsequently agrees to submit evidence the case will be reopened and appropriate action taken on the basis of all the evidence. DISM § 356.3.

[9] Clear-cut evidence of medical recovery is deemed to exist when a beneficiary who was scheduled for a medical reexamination returns to full-time work without any significant medical restrictions. DISM § 353.2B.

[10] The state agency is obliged to ensure that medical source evidence used to establish the absence of continuing disability is in writing, with the source properly identified. DISM § 353.4C.

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action;[11] (2) given a summary of the evidence upon which it is based, followed by an opportunity for the worker or his representative[12] to review it[13] and to respond in writing in at least ten working days; and (3) given additional time (20 to 30 days) if needed to obtain and submit additional evidence in support of

[11] State agencies ordinarily communicate with beneficiaries by letter, but they do occasionally call beneficiaries. Any telephone or face-to-face communications between the beneficiary and the state agency are documented in the beneficiary's file, which also includes copies of all correspondence. CM § 6705.3(d)(1).

[12] A beneficiary may be represented before SSA or the state agency by any practicing attorney or other qualified person at any stage of the entire proceedings, including the period before an initial determination is made. 20 C.F.R. 404.971–404.972. (Typical representatives include attorneys, veterans' service officers, officials of labor unions, fraternal or religious organization, as well as friends or relatives of the worker.) Such representatives may charge fees, which, pursuant to the Act and regulations may be paid by the Secretary out of past-due benefits established in the proceeding. 42 U.S.C. 406; 20 C.F.R. 404.975–404.977. See generally *Staff Report* 430–432.

[13] The beneficiary and any representative are entitled to a detailed summary, including the specific findings of the medical evidence, and are entitled to examine all other evidence. In addition, the representative is permitted to examine the actual medical evidence. However, in accordance with accepted medical practice for the protection of the doctor-patient relationship, the worker is not presently entitled to examine the medical evidence, and state agencies are instructed to use care in mentioning to the worker information in medical reports that may be embarrassing or harmful to him, such as family affairs, mental illness, and malignancies. CM § 7314. See also 20 C.F.R. 401.3(a)(2). These limitations are currently under review as part of a comprehensive study to determine the extent to which practices and policies of the Department may be affected by the recently-enacted Privacy Act of 1974, which goes into effect in September 1975. 88 Stat. 1896.

his claim. DISM § 353.6. Such summaries of the evidence are "tailored to individual case situations and * * * prepared in such a manner as to enable beneficiaries to understand better the reasons for cessation." DISM § 353.7A. In a substantial number of cases the beneficiaries make further submissions in response to this notice.[14]

After taking into account any response by the beneficiary,[15] the state agency makes its determination. In many cases where the beneficiary makes a further submission the state agency alters its tentative determination and concludes that the worker is still disabled. If the determination remains adverse to the beneficiary, it must be supported by specific findings and conclusions. 20 C.F.R. 404.905(d). Disability will be found to have ceased as of the month in which the evidence establishes that medical recovery has occurred. 20 C.F.R. 404.1539; CM § 6708(a); DISM § 355.

[14] No data are available about the frequency of such further submissions, nor of the frequency with which the state agencies revise their tentative determinations as a result thereof. SSA informs us, however, that in at least a substantial proportion of the cases in which the determination is disputed, further submissions are made.

[15] The state agencies generally do not interview the worker. They are not barred from doing so, however, if the worker were to so request and to go to the state agency office. If a worker does go to the state agency, or, as happens more commonly, responds to the invitation to present questions to the local SSA district office (see Pet. App. 68A), the office in question will prepare a report of the resulting interview which may include personal observations on the worker's apparent impairments (App. B, *infra*, pp. 44A–45A). Such a report is also prepared by the district office when it is requested to assist the state agency in developing the facts. DISM § 353.3B2.

The state agency forwards its determination to SSA's headquarters in Baltimore for review by a disability examiner in the Bureau of Disability Insurance. 42 U.S.C. 421(c); CM §§ 6701(b) and (c), T6262; Disability Insurance Letter No. II–46 (App. B, infra, 60A–61A); DISM § 352C.[16] The primary purpose of such review is to assure that the state agencies are consistent in applying the uniform standards contained in the state agency agreements and otherwise established by SSA. As we have noted, however, SSA may not itself revise the state agency's determination to be more favorable to the beneficiary; it may only determine that a worker is no longer disabled or that the disability ceased sooner than determined by the state agency (see p. 21, *supra*).[17] If SSA believes that the worker is still disabled, or that the disability lasted longer than determined by the state agency, it can only return the file to the state agency for further development and the state agency is not obliged to revise its determination.[18]

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[16] Although previously SSA had reviewed all state agency determinations on initial applications concerning disability, in 1972 it adopted a sampling approach in which it reviews only about five percent of the determinations. *Staff Report* 27–30, 206. However, SSA still reviews all state agency determinations about whether a worker is still disabled.

[17] In practice, such cases are returned to the state for reconsideration.

As to initial claims for benefits, in 1969 SSA returned to the state agencies for substantive reasons 6.8 percent of the decisions sustaining a claim of disability. *Staff Report* 209. In 37 percent of the cases returned in the period January to June 1969, the state agencies revised their original decisions from allowance to denial, at times after obtaining additional evidence. *Id.* at 212. The rates for decisions that disability has continued would probably be comparable.

[18] In 1969, SSA returned to the states for substantive reasons 5.4 percent of the state agency decisions denying an initial

Whether it agrees or disagrees with the state agency's determination that a worker is still disabled, SSA notifies the beneficiary in writing to that effect. If the determination is adverse, the notification also informs the beneficiary of the basis for the determination and of the right (discussed at pp. 10A–11A, *infra*) to seek reconsideration. 20 C.F.R. 404.907. A decision by SSA to terminate a worker's benefits (whether based on the state agency's or its own determination of cessation of disability) constitutes an "initial determination" (20 C.F.R. 404.905(d)), as to which the beneficiary has procedural rights of review prescribed both by the Act and by regulation (see pp. 10A–14A, *infra*).

The effect of a determination that the worker is no longer disabled on payment of benefits will vary according to the circumstances. If the worker ceased to be disabled more than two months prior to the determination, the payment of benefits will terminate immediately, for the two-month post-disability grace period (see p. 16, *supra*) would have elapsed. If, however, the disability is found to have ceased near the date of the determination (as it was in respondent's case (see p. 8, *supra*)), then benefits will be paid for an additional month or two, depending upon the dates involved.

(b) *Procedures following termination of benefits.* The Act provides that upon a determination that a worker is no longer disabled the latter may within a period prescribed by the Secretary (which shall not be less than six months (42 U.S.C. 405(b)) request an evidentiary hearing, and is also entitled to judicial re-

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claim of disability. *Staff Report* 209. The states revised their original decisions from denial to allowance in 52.7 percent of the cases returned during the period January to June 1969. *Id.* at 212.

view of the Secretary's final decision pursuant to 42 U.S.C. 405(g). See 42 U.S.C. 421(d).

In addition, the Secretary has by regulation provided that beneficiaries may request reconsideration of the initial determination, even if no new evidence is to be submitted. 20 C.F.R. 404.909–404.916. A request for reconsideration may be submitted to SSA at any time within six months of the initial determination,[19] which period SSA may extend for good cause and other reasons. 20 C.F.R. 404.911; see 20 C.F.R. 404.612; 404.953. Reconsideration must be sought before there can be an evidentiary hearing. 20 C.F.R. 404.917(a). SSA informs us that in 1973, out of 34,600 initial determinations that disabilities had ceased, reconsideration was requested in only 8,800 cases (*i.e.*, 25.4 percent).

Reconsideration is initially conducted by the state agency, but usually not by the same persons that handled the case before. Dixon, *supra,* at 32. The beneficiary may submit new evidence (and he or she frequently does), and the state agency may seek a new or additional physical examination of the worker, may obtain further vocational evidence, or may otherwise update the file. *Staff Report* 239.[20] The state agency then submits its determination on reconsideration to SSA, where it is reviewed in the same manner

[19] The six-month period was established because, in view of the fact that reconsideration is a mandatory step before a hearing may be requested, a period shorter than six months would result in beneficiaries who did not seek reconsideration being denied the six-month period the Act prescribes for requesting a hearing. *Staff Report* 38.

[20] Most states agencies now telephone persons requesting reconsideration when a question requires resolution or when it appears that additional sources of treatment may exist. *Staff Report* 242. The state agencies do not ordinarily interview the beneficiary personally.

as the state agency's original determination about whether the worker's disability had ceased (see p. 8A, *supra*). In a significant proportion of the cases in which reconsideration is sought, the state agency or SSA determines that the worker is still disabled.[21] SSA again notifies the beneficiary in writing of the determination, which, if adverse to the beneficiary, is treated as a "determination" for the purpose of the statutory right to a post-termination evidentiary hearing (see pp. 9A–10A, *supra*). 20 C.F.R. 404.917(a). This notification also informs the beneficiary of the basis for the determination and of the right to request a hearing (20 C.F.R. 404.915), such a request to be filed within six months unless the period is extended. 20 C.F.R. 404.918. SSA advises that in 1973 hearings were requested in 1,900 of the 5,600 cases (34 percent) in which, upon reconsideration it adhered to the determination that disability had ceased.[22]

At the hearing, the beneficiary may submit additional or new evidence of disability, and the administrative law judge (who may also call for the presentation of additional evidence) considers the record *de novo* even if no new evidence is submitted. 20 C.F.R. 404.927. The hearing is non-adversary, and SSA is not represented by counsel or other staff. As at all

[21] As to initial applications for benefits, in 39.5 percent of the cases in which reconsideration was requested in fiscal 1973 the result on reconsideration was favorable to the beneficiary. *Staff Report* 308–309. During the ten-year period from fiscal 1964 to 1973, this rate ranged between 29.9 percent and 39.5 percent. *Ibid.* No data are available about the reasons for different results upon reconsideration.

[22] As of April 1974, the median processing times for all disability cases (including initial applications and terminations) were 74 days for reconsiderations resulting in affirmances, 105 days for reconsiderations resulting in "reversals." *Staff Report* 238.

prior and subsequent stages, however, the beneficiary may be represented by counsel or other representatives. 20 C.F.R. 404.934. In addition, the beneficiary may (but is not required to) appear and testify personally (*ibid.*); witnesses may be subpoenaed (20 C.F.R. 404.926); and they must ordinarily testify under oath and answer relevant questions propounded by the parties. 20 C.F.R. 404.929. SSA, however, need not proffer for confrontation and cross-examination by the beneficiary all persons who have provided the evidence underlying its determination. See *Richardson* v. *Perales, supra.*[23]

SSA informs us that in a substantial proportion of cases the administrative law judge concludes that the worker is still disabled or that the disability continued longer than had previously been determined; including cases in which the worker did not appear.[24]

If the judge rules adversely to the beneficiary, the latter within 60 days may request SSA's Appeal

[23] The median processing time for all disability cases in mid-1974 was 163 days between a request for hearing and the decision. *Staff Report* 238. In addition to the time lag due to processing, as to both reconsiderations and hearings significant delays result from the beneficiaries waiting a substantial part of the six-month period to request further review, even though they are no longer receiving benefits. In cases involving initial application, the mean periods between the adverse decision and the request for further review were 60.9 days for reconsideration requests and 65.6 days for hearing requests. *Id.* at 246.

[24] In fiscal 1973, administrative law judges found for the beneficiary, in whole or in part, in 24,100 (*i.e.*, 45.3 percent) of the 53,100 cases involving initial applications for disability benefits. *Staff Report* 310–311. A study of such cases in fiscal years 1965–1968 found that the judge ruled in the beneficiaries favor in 36.4 percent of the cases in which the worker did not appear (Dixon, *supra*, at 81).

Council to exercise its discretionary authority to review the judge's decision and must do so before seeking judicial review. 20 C.F.R. 404.946.[25] The Appeals Council which engages in *de novo* review, may consider new or additional evidence (see 20 C.F.R. 404.949) and may affirm, modify or reverse the decision of the administrative law judge or may vacate that decision and remand the case to the judge for additional proceedings. 20 C.F.R. 404.950. In fiscal year 1973, the Appeals Council ruled favorably to the worker in 12.3 percent of all disability cases (initial applications and terminations) it reviewed. *Staff Report* 254.

Within 60 days of an adverse decision or denial of review by the Appeals Council, a beneficiary may institute an action in a district court seeking judicial review. 42 U.S.C. 405(g).[26] The court may not take new evidence and must accept the agency's findings of fact as conclusive if supported by substantial evidence. 42 U.S.C. 405(g).[27] In the great majority of cases the agency's decision is affirmed,[28] in which event the disappointed beneficiary is entitled to further judicial

[25] The Appeals Council may also review a case upon its own motion (20 C.F.R. 404.941) or upon certification by an administrative law judge. 20 C.F.R. 404.942.

[26] Judicial review is available only with respect to a "final decision of the Secretary made after a hearing * * *." 42 U.S.C. 405(g).

[27] The court may remand the case to the Secretary for additional findings. 42 U.S.C. 405(g).

[28] In 1973, in disposing of 1,217 disability cases (including both initial applications and terminations) the district courts affirmed the agency in 85 percent of the cases in which the court reached a final decision. *Staff Report* 269. The total number of such cases filed that year was 2,226, in addition to the 2,676 pending at the beginning of the year. *Ibid.*

review in the same manner as with judgments in other civil actions. 42 U.S.C. 405(g).

2. CONTINUING DISABILITY INVESTIGATION CONCERNING WORK ACTIVITY

Because return-to-work cases do not necessarily or usually entail the state agency involvement mandated by the Act, the procedures prior to the post-termination evidentiary hearing stage differ from cases of possible medical recovery. Although this case does not directly challenge the return-to-work procedures, we describe them briefly so that the Court may have a more complete picture of the termination procedures.[29]

Upon receipt of information indicating work activity,[30] SSA's Bureau of Disability Insurance sends the beneficiary a questionnaire (Pet. App. 68A–71A) soliciting information about the nature and extent of the beneficiary's employment, earnings, current medical restrictions, and receipt of any vocational rehabilitation services. CM § 6705.2(b)(1); DISM § 352A.[31] The beneficiary is also invited to provide any additional information he believes important and of assistance to SSA's determination of his continuing entitlement to benefits.[32]

[29] The work activity procedures have been revised to eliminate various roles previously played by state agencies in such cases. See Disability Insurance Letter No. 11–46 (App. B, *infra*, pp. 60A–61A). Accordingly, many of the portions of the DISM in the Appendix to the petition have been superseded by the CM appended to this brief.

[30] Although no precise data are available, SSA informs us that nearly all such information derives from employers' quarterly reports of wages paid (see p. 3A, *supra*, n. 5).

[31] The form also states: "If you have any questions, or need help in filling out the form, please telephone or visit any social security office" (Pet. App. 68A).

[32] Because of the nature of the questions typically presented, in cases involving self-employment, agricultural employment, or

The Bureau reviews the beneficiary's response to the questionnaire to determine whether an issue of continuing disability is actually present. When the response is clear and complete and there is no material conflict in the evidence, the Bureau's determination of continuing entitlement will be based solely upon the work activity information reported by the beneficiary. However, when the response is inadequate or conflicts in any way with evidence indicating that the beneficiary is engaging in substantial gainful activity, or when the beneficiary fails to respond, the Bureau will have the SSA's district office[33] nearest the beneficiary communicate with him personally[34] to clarify any factual differences or misunderstandings or to solicit the desired information. CM §§ T6263, 6705.3(c)–(d); DISM § 352.A.4, B). Upon completion of this investigation, the SSA district office evaluates all the evidence and prepares a proposed determination as to the beneficiary's continuing entitlement. Disability Insurance Letter No. 11–46 (App. B, *infra*, pp. 60A–61A).

Before this determination becomes final, however, in cases where the evidence conflicts in any way with the beneficiary's statements about the amount of earnings, periods of work, or date of its cessation, SSA: (1) informs the beneficiary of the proposed adverse determination (2) provides a brief summary of the evidence on which it is based and a reasonable oppor-

voluntary report of work activity with a future medical reexamination date, the SSA district office nearest the beneficiary will, instead, personally interview him. CM § 6705.2(c).

[33] There are over 1,200 SSA district offices and branch offices. *Staff Report* 135.

[34] Any telephone or face-to-face communications by the SSA district office are documented in the beneficiary's file, which also includes copies of all correspondence. CM § 6705.3(d)(1).

tunity (at least ten working days) to respond in writing or in person to the SSA district office, and (3) upon request, gives the beneficiary additional time (20 to 30 days) to obtain and submit additional evidence in support of his claim. CM § T6273(e). As with medical recovery cases, the summary of the evidence is tailored to the individual case and is prepared so as to enable beneficiaries to understand the reasons for the determination. CM § T6273(c), (d). After taking into account any response by the beneficiary, the SSA district office then makes its determination which it forwards to the Bureau of Disability Insurance for review by a disability examiner.[35]

When the Bureau determines that disability has ceased, it so advises the beneficiary, giving the effective date of cessation. Cessation of disability because of work activity will be found to occur: (1) as of the first month after expiration of the nine-month trial work period (see p. 25, *supra*) in which the evidence establishes that the beneficiary has demonstrated a capacity to engage in substantial gainful activity; or (2) if he is not entitled to a trial work period (see p. 25, *supra,* n. 29), as of the first month in which he demonstrates a capacity to engage in substantial gainful activity. CM § 6708(b). Such an "initial determination" that disability has ceased results in termination of the payment of benefits (subject to the two-month grace period (see p. —, *supra*), and is subject to essentially the same procedures for

[35] When the Bureau's review reveals a material deficiency in the determination, the Bureau will either revise the determination or return the case to the district office for additional information. CM § T6275.

reconsideration,[36] evidentiary hearing, Appeals Council review and judicial review that we have already discussed (see pp. 10A–14A, *supra*). According to SSA, however, in relatively fewer return-to-work cases than in medical recovery cases does the beneficiary seek these additional modes of review, perhaps because the issues in return-to-work cases admit of less difference of opinion.

[36] The reconsideration of an initial determination based upon return to work does not involve the state agency; such reconsideration is ordinarily undertaken by the district office. CM § T6266(c).

APPENDIX B

Continuing Disability—General

6700. The Obligation To Investigate Continuance of Disability.—Disability ceases when the individual's physical or mental impairment is no longer of such severity as to prevent him from engaging in SGA or, subject to the trial work period provisions, he demonstrates, by working, the ability to engage in SGA (except in certain cases based on statutory blindness).

The Administration has an obligation to terminate disability benefits and freeze periods when an individual is no longer under a disability. Events and circumstances which will result in the initiation of a continuing disability investigation are described in § 6705. The primary purpose of a continuing disability investigation (CDI) is to obtain complete, current information about the disabled individual's condition and any work activity since the last contact with him. The information is required so that an evaluator may be in a position to determine whether the individual is still under a disability.

6701. Responsibility of Various Offices.—Responsibility for identifying and developing potential continuing disability issues is shared by DO's, SA's, and BDI.

● (a) *District Offices.*—DO's may become aware of continuing disability issues either through a direct beneficiary contact or a CDI request from BDI. Most CDI's are initiated in BDI as a result of earnings postings, voluntary reports, or scheduled medical reexaminations, but there are some cases in which the beneficiary makes a report (i.e., work activity, medical improvement) directly to the DO. Irrespective of the manner in which the DO learns of a CDI issue, cases should be developed and transmitted in accordance with instructions in this chapter. (All medical evidence development is initiated by the State agency. A DO will accept medical reports voluntarily brought in by the beneficiary or submitted in his behalf, but will not request medical evidence.)

● (b) *State Agencies.*—Medical development of continuing disability cases is the responsibility of the SA's because they are especially equipped to obtain specific medical information in a given case and can pinpoint the development of clinical and laboratory findings in the light of evidence already in the file. After the SA obtains medical or other evidence that may be required, they prepare a determination of continuance or cessation and forward the case to BDI for review.

● (c) *Bureau of Disability Insurance.*—BDI examines all incoming information which raises a question of possible medical recovery or indicates an ability to work, and screens out cases in which a CDI is not required. BDI determines whether DO and/or SA action is required and also approves SA determinations or recommends further development. BDI notifies the beneficiary and the DO of the final decision.

6702. Continuing Disability Issue—General.—The issue of continuing disability will arise in two types of situations: (1) where there is a reasonable likelihood that the individual's condition may have improved, and (2) where the individual's condition has not improved but there is work activity. Future medical reexamination dates are established in those cases where the medical evidence indicates that sufficient improvement may occur to permit return to substantial gainful activity at some later time.

When a beneficiary for whom a medical reexamination diary has been established returns to work his return to work before the months the diary will fall due may be an indication of medical recovery, and justifies an immediate investigation of whether or not he has in fact recovered, without regard to the trial work period. If the State agency finds that he continues to have a disabling impairment, his case will not be investigated and evaluated again until he has worked in 9 months, or when a subsequent medical reexamination diary matures, or affirmative evidence of medical recovery is received, whichever date is earliest.

When a beneficiary for whom recovery is not likely (no medical reexamination diary has been established) returns to work, he will continue, as in the past, to work in his trial work period without reexamination of his medical condition, unless BDI or the SA receives affirmative evidence of medical recovery.

A beneficiary for whom a medical reexamination diary has been established is notified that we have scheduled a medical followup at a future date and that he should notify us if he returns to work. The notice is furnished with his award certificate in an initial case and his continuance letter after a continuing disability investigation. It is also most important that DO's always explain to the beneficiary

(or in reply to general inquiries) that the trial work period continues only so long as he continues to have a disabling physical or mental impairment (see § 6703.6).

6703. Work Activity—Trial Work Period.—The law provides a trial work period without loss of benefits for persons determined to be under a disability who have not medically recovered (see § 6703.2(*c*) for exception). The individual who has not recovered medically may render "services" in as many as 9 calendar months (not necessarily consecutive) during which his work, regardless of the magnitude, will not be used as the basis for determining that disability has ceased. Not until after 9 months of services will his work be considered in determining whether he has demonstrated ability to engage in SGA. After the end of the trial work period, any such services (including the services rendered during any of the 9 months) may be considered in determining whether he is able to engage in SGA any month thereafter.

6703.1 Trial Work Period—Definition of Services.—(*a*) *General.*—The term "services" means activity in employment or self-employment which is performed for remuneration or gain or is determined to be of a type normally performed for remuneration or gain. Since the trial work provision is intended to give a disabled beneficiary the opportunity to test his ability to work and hold a job, minor work activity may generally be disregarded. Therefore, work activity in *employment* in a month will constitute "services" only if it is actually or usually performed for remuneration or gain, amounting to more than $50 either in cash or in kind. Work activity in *self-employment* will be determined to be "services" only where net earnings in a calendar month are more than $50 for a month or the self-employed person spends more than 15 hours in that month in the work activity.

In some SE cases it may not be possible to isolate from the total net earnings the net earnings for each particular month of self-employment. When this occurs after full development divide the net earnings for the particular work period by the months of self-employment to find net earnings per month. Cases where remuneration for employment is in the form of commissions should be handled in a similar manner.

● (*b*) *Activity Which Does Not Constitute "Services" for Purpose of Charging Trial Work Period Months.*—Activity performed by a beneficiary for which payment in excess of $50 a month is made does not constitute "services" if the activity, although resembling services in employment for remuneration or gain, is:

(1) part of a prescribed program of medical therapy, and

(2) carried out in a hospital under the supervision of medical and administrative staff; and

(3) is not performed in an employer-employee relationship; and

(4) is not normally performed for remuneration or gain.

See SSR 69–46 for a case illustrating activity performed under these circumstances. When appropriate, the DO will develop the question of employer-employee relationship (§§ 1200 and 4520 ff.). When forwarding cases where activity of this nature is involved, the DO will annotate the Transmittal SSA–831, "Work Therapy Plan in Hospital, no "Services" for TWP."

6703.2 When the Trial Work Period Does Not Apply.—(*a*) *Freeze Cases.*—A person entitled to a freeze only is not entitled to a trial work period. Examples of freeze only cases are:

(1) Individual is entitled to a freeze only because of railroad or military service credits that may be used toward a freeze but not toward entitlement to DIB (§ 6010).

(2) Individual is statutorily blind but is not entitled to a disability insurance benefit (§ 6060(*a*)).

(3) Individual in freeze status fails to file for DIB for some other reason.

● (*b*) *Only One Trial Work Period During a Period of Disability.*—An individual will not be entitled to more than one trial work period within the same disability period.

● (*c*) *Subsequent Period of Disability.*—If an individual's subsequent period of disability begins within 5 years after the termination of an earlier freeze or DIB, he may become entitled to DIB without serving a waiting period. In such cases the trial work period provision does not apply.

There are cases, however, where a claimant becomes reentitled to DIB within 5 years after a prior termination but he is not paid for the full number of months he is disabled. This can occur where the subsequent application is not filed until 18 or more months after the onset of the subsequent disability; since benefits can be paid retroactively for only 12 months, a beneficiary in this situation will have a period of 6 or more months after onset in which he does not receive benefits. Where a beneficiary does actually in effect serve a 6-month waiting period, he is entitled to a trial work period.

NOTE: Even though a childhood disability beneficiary does not serve a waiting period he is entitled to a trial work period if it is found he has not recovered medically when he returns to work. If a CDB later becomes simultaneously entitled to DIB on his own account number, or his CDB is terminated and he later becomes entitled to DIB on his own account number, he must serve a 6-month waiting period before he can receive DIB. He is, therefore, entitled to a trial work period as a DIB (irrespective of whether he worked in a trial work period as a CDB). This remains true even if his period of disability and his entitlement to DIB occur within 5 years of his termination of CDB.

● (*d*) *Disabled Widows, Surviving Divorced Wives and Widowers (DWB).*—A person entitled to (DWB) benefits is not entitled to a trial work period.

● (*e*) *Certain Statutorily Blind Workers Age 55–64.*—The special blindness provision (§§ 6060(*b*) and A6060(*e*)) in the law is applicable in cases where the individual is age 55–64 and statutorily blind. Under this special provision, disability for these individuals is defined for purposes of entitlement to disability insurance benefits as the inability by reason if such blindness to engage in SGA requiring skills or abilities comparable to those of any SGA in which he engaged prior to onset of blindness or age 55, whichever is later. Generally, the skills or abilities required in the performance of SGA after age 55 or onset of blindness, whichever is later, should be compared with those of his previous regular work.

The trial work period will not apply for an individual who is entitled by virtue of the special blindness provisions, unless:

(1) He returns to work which is comparable to the activity he engaged in during the 10 years prior to blindness or age 55, whichever is later, or

(2) His last previous work activity was termi-

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nated because of impairment or other reasons related to his capacity to engage and his return to work involves a significant vocational adjustment.

6703.3 When the Trial Work Period Begins

The trial work period begins with the month in which the beneficiary has filed an application and becomes entitled to DIB or, in the case of a disabled child beneficiary who has attained the age of 18, with the month in which he attains age 18 or the month in which he becomes entitled to such benefits, whichever is later. The 9 months of trial work (whether or not such 9 months are consecutive) will be counted beginning with the first month within the trial work period in which a beneficiary, who has not recovered medically, performs services.

Example 1: Beneficiary became entitled to DIB for 11/69 by an application filed 12/69 and begins work 3/70. The trial work period begins 12/69 and counting of trial work months begins 3/70.

Example 2: Beneficiary became entitled to DIB in 2/71 by an application filed 1/71; his onset date is 7/15/70 and he begins work 12/70 (during the waiting period); work during the waiting period was determined to be not SGA. Trial work period and counting of months of trial work begins 2/71.

6703.4 When the Trial Work Period Ends

The trial work period ends with the 9th month in which the beneficiary has worked in the trial work period or when his disability ceased for reasons other than work (e.g., medical recovery) whichever is earlier. Therefore, the fact that most individuals are entitled to a trial work period beginning with the first month of entitlement does not mean that they are automatically entitled to 9 months of trial work.

Example 1: Beneficiary entitled 7/69 by an application filed 7/69 (no medical reexamination established and medical recovery has not occurred); begins work in 1/70 and continues in all succeeding months. Trial work period ends with 9/70.

Example 2: Beneficiary entitled 7/69 by an application filed 7/69 (no medical reexamination established); begins work in 6/71. In 9/71 he submits a medical report from his attending physician indicating medical improvement (i.e., affirmative evidence). Based on further medical development cessation is found 10/71 based upon medical recovery.

Example 3: Beneficiary entitled 7/71 by an application filed 7/71 (medical reexamination established for 6/72) begins working 1/72. Evidence shows medical recovery in 1/72. Disability ceases 1/72.

6703.5 Evaluation of Work Activity After 9 Months of Trial Work

After an individual has worked in 9 months, the SA in determining whether his disability has ceased will review all medical and nonmedical factors, including the claimant's work before, during, and after the trial work period.

When the individual has demonstrated by working that he is able to engage in SGA, cessation is established as of the first month, after the end of the trial work period, in which the evidence establishes the individual is able to engage in SGA. This may be the first month after the last month in the trial work period or any subsequent month, depending on the facts in the case. It is not necessary for the individual to still be working in the month of cessation. For example, if the SA receives a case in the 9th month of work which shows that the individual stopped working in the 9th month cessation may be found in the 10th month.

6703.6 Explaining the Trial Work Period

Any time the trial work provision is being explained to a beneficiary, it should be pointed out that medical recovery will prevent a person from receiving the full benefit of the trial work provision. A beneficiary for whom a medical reexamination diary has been established will be notified that we have scheduled a medical followup at a future date (see § 6702) or he will be contacted upon release from a hospital and that he should notify us if he returns to work. It should be explained to the beneficiary that the trial work period continues only so long as he has not recovered from his medical impairment, that a prompt report must be made when he returns to work, and that we will evaluate his condition at that time to determine whether his impairment remains at a level of severity which will permit him to receive benefits in a trial work period.

6705. Circumstances Which Raise a Question of Continuing Disability

During the course of an individual's period of disability various situations occur which indicate that there is a need for a continuing disability investigation to determine whether, in fact, an issue of continuing eligibility does exist. It is the function of the DO to develop and record accurately the pertinent information leading toward resolution of the specific issue at hand. Although a comprehensive report of an individual's disability status is desirable, the type and appropriateness of development will depend upon the circumstances in each individual case. For instance, development of an isolated wage posting, in the absence of any other change in status, should not require the extensive interview required when the reason for investigation involves possible medical recovery. The techniques for conducting a continuing disability interview are much the same as those used when the beneficiary first filed application for disability benefits. Essentially, the beneficiary's allegations concerning impairment, work, and the circumstances surrounding any change in his disability status must be fully described. Any one of the following situations warrants the initiation of a continuing disability investigation.

(a) Voluntary Reports

Notices indicating that a beneficiary has improved or returned to work may be received in BDI or the DO in the form of a letter or cards designed expressly for reporting these events and issued periodically by SSA to beneficiaries.

The individual sometimes reports personally to the DO that his disability status has changed. Occasionally, information is received from persons wishing to remain anonymous. In any event, all such notices initiate the investigative procedure.

(b) Change of Address or Request for Change of Payee

When a notice is received that a disabled individual's address is being changed from a hospital to a private residence the possibility of recovery exists. The extent of development requested by BDI will depend on the facts in any one given case; however, the status of the individual's physical or mental impairment must be ascertained. In cases involving mental impairments, a change to a private residence is usually accompanied by a request for change in payee from representative payee to the beneficiary himself. The two issues, if presented, should be developed simultaneously. Instructions for payee development are contained in § 3014.

(c) Release From Hospital

Release from a hospital is usually an indication of some improvement in an individual's mental or physical condition. Not all hospitals maintain the same policy regarding the extent of improvement which would warrant release. However, when an individual is released, confinement of strict medical regimen may no longer be necessary. It is, therefore, necessary to investigate and update the beneficiary's file to aid BDI and the SA in determining whether current or future medical evaluation is desirable.

(d) Vocational Rehabilitation Notices

State Vocational Rehabilitation agencies attempt to rehabilitate those individuals who have the potential for future reemployment. These agencies are valuable sources for furnishing information relating to a beneficiary's medical or rehabilitative progress. Generally, the VR agency will notify BDI at the point in time where the individual with whom they have worked is about to, or has reached his potential for returning to the labor market. When such a notice from a VR agency is received it is regarded as warranting a continuing disability investigation.

(e) Reported Earnings

BDP maintains a control on the record of each individual for whom disability has been established. Any earnings reported for such an individual, receive a computer screening and, where necessary, are reviewed by an examiner to determine the basis for the earnings and their amount. Wage postings oftentimes represent sick pay, vacation pay, late reporting by a former employer, etc. However, they may also represent a return to employment. If, after this screening, the wage postings are not satisfactorily explained, BDI will initiate a continuing disability investigation to establish whether a beneficary's disability status has changed.

See § 6743 for explanation of earnings sheet CDI–805, the form on which BDP shows these postings, which will usually be inserted in the claims folder.

(f) Required Medical Reexamination

Medical reexamination dates are established (based on the evidence in file) in those cases where the impairment(s) is expected to improve sufficiently to enable the beneficiary to engage in sub-

stantial gainful activity. When the date of the medical reexamination is reached, BDI requests the SA to undertake an investigation to determine the status of the individual's physical and mental condition (see § 6705.1).

(g) Miscellaneous

The DO and BDI often are contacted by individuals who formerly were receiving disability benefits or were in freeze status and who request information concerning benefits. Some of these persons may have had their period of disability terminated for failure to cooperate, because their whereabouts were unknown, etc. In certain cases benefits may merely be in suspense status or as in a freeze case benefits may not have been awarded. In order to bring the claim file up to date, BDI may request a continuing disability investigation before initiating payment or reinstating benefits.

6705.1 Issues of Medical Recovery Including Medical Reexamination Diary Procedures

(a) General

Medical recovery occurs when the medical and vocational evidence establishes that the beneficiary's functional capacity has been sufficiently restored to enable him to engage in substantial gainful activity regardless of whether there has been an actual return to work. Disability ceases when medical recovery occurs, even though the beneficiary may not have used the full 9 months of a trial work period. It is, therefore, urgent that an investigation of a continuing disability issue involving a possibility of medical recovery be completed promptly, documented fully and, when it is necessary, timely suspension action be taken to prevent overpayments within the cautions set forth in § 6706.

Medical recovery issues, including matured medical reexamination diary cases, are sent by BDI directly to State agencies (SA) for development and adjudication. The SA contacts the beneficiary to determine his current treatment sources and his opinion as to his medical condition and its effect on his ability to work. When the contact is by mail, the beneficiary is asked to complete Form SSA–454(a) (Social Security Disability Beneficiary Report). When the contact is by telephone, the SA completes Form SSA–454(a), records the name of the individual supplying the information, and secures written confirmation. It then obtains whatever medical documentation is needed by contacting the beneficiary's medical sources and, if necessary, independent sources for the facts concerning the beneficiary's current medical condition.

When the medical evidence conflicts *in any way* with the beneficiary's assesament about the severity of his impairment, or about the date of cessation of such impairment, the SA again contacts the beneficiary before requesting suspension or preparing a determination of cessation. It informs him of the proposed suspension or cessation, the reasons therefor, and his right to rebut the proposed action. After the beneficiary has had the opportunity to submit rebuttal evidence and/or all conflicts are resolved, a determination is prepared and the file is forwarded to BDI. There are two instances in which the DO will become involved: (1) when the SA requires DO assistance (subsection (*c*) below), and (2) when the beneficiary feels he needs help and calls or visits the DO (see Subsection (*b*) below).

(b) Beneficiary Requests DO Assistance

(1) SA CONTACT IS BY MAIL

Form SSA–454(a) contains the statement—"If you have any questions, or need help in filling out the questionnaire, please telephone or visit any social security office." Hence, when the beneficiary contacts the DO for assistance, the DO should provide whatever assistance is needed to complete this form. If a beneficiary comes to the DO without this form, the DO should utilize Form SSA–454 (Report of Continuing Disability Interview (see § 6749)) and, if needed, Form SSA–821 (Work Activity Report) (see § 6748). Upon completion forward all material to the SA. (Note: Form SSA–454(a) (see § 6746) will *not* be stocked for DO use in conducting a CDI.)

(2) SA CONTACT IS BY TELEPHONE

When the SA contact with the beneficiary is by telephone, Form SSA–454(a) is used to record all pertinent information obtained. The SA then sends the completed form to the beneficiary for his review, signature and return to the SA. If the beneficiary comes to the DO with Form SSA–454(a) (or other communication) completed by the SA, it may be that he does not understand the issue, the intent and/or the need for furnishing the information to the SA. There may also have been a misunderstanding in the recording of certain information. It is therefore necessary for the DO(1) to review the responses entered on Form SSA–454(a), (2) to assist in answering any questions, and (3) to clarify any possible misunderstanding. If the beneficiary objects to signing the form, the DO will obtain a statement outlining the beneficiary's objection and prepare an RC to record the interview. Upon completion, forward all material to the SA.

(c) Referral of Cases by the State Agency

When the beneficiary does not respond to the State agency inquiry, or if his responses are inadequate or illegible, and in other instances where additional information is needed, the State agency may request assistance from the district office. These requests may include cases in which development on the Form SSA–401 (Medical History and Disability Report) was curtailed when the initial application was filed, and the State agency is unable to obtain the needed documentation, or when the completed questionnaire reveals that the beneficiary has worked and this factor needs additional documentation.

When a State agency requests assistance from a DO, the Form SSA–883 (Request for Field Investigation of Continuing Disability) will usually contain an appropriately detailed explanation. If the State agency does not specify the exact development needed or the needed evidence is not clearly apparent to the district office, the district office should complete a Form SSA–454 (Report of Continuing Disability Interview) and/or a Form SSA–821 (Work Activity Report) as is customary under § 6732. Upon completion of the necessary action, the file should be returned to the State agency. When the district office cannot locate the beneficiary or he refuses to cooperate, document the file and process in accordance with §§ 6736.4 and 6736.5.

6705.2 Continuing Disability Investigations —Work Activity

(a) General

One of the principal goals of the Social Security Administration is to assure that beneficiaries get their monthly checks without delay or interruption so long as they continue to be eligible for such benefits. When benefits are no longer due, payments must be stopped as promptly as practicable, but *only* when consistent with the objective of affording the beneficiary "due process." Hence, it is essential that prior to any action to stop disability benefit payments, the beneficiary (or his representative payee) (1) must be given a meaningful pre-determination notice of any adverse action to be taken and the basis for the action, (2) must have an opportunity to present any additional information or evidence that he feels may have a bearing on the proposed decision, and (3) subsequently, when a formal determination is effectuated, must be given written notice of the determination (including the rationale) and informed of his rights to relief and appeal under the law.

(b) BDI Development and Review of Evidence

(1) DIRECT MAIL CONTACT WITH BENEFICIARY BY BDI

Cases involving work activity are generally identified by BDI and developed directly with the beneficiary (or payee) by means of a letter-questionnaire. In some instances the DO is the first to become aware of information or evidence which requires a continuing disability investigation (see § 6705). In cases where the issue is identified by BDI, BDI mails Form SSA–821(a) (Report of Work Activity—Continuing Disability) (see § 6747) to the beneficiary for completion and requests that the beneficiary return the form directly to BDI. A postage-free envelope pre-addressed to BDI is enclosed for this purpose. The letter-questionnaire informs the beneficiary that the information he submits will be used to determine his continuing entitlement and, if it is determined that he is no longer entitled, benefits will cease. The questionnaire solicits details regarding any recent work activity. It also asks about current medical restrictions and invites the beneficiary to submit any additional information or statements that he believes are important in deciding his continuing entitlement.

This development technique is used by BDI (1) in all instances where a trial work period (TWP) diary date matures, (2) when unexplained postings are reported to a beneficiary's earnings record, (3) in most instances where a beneficiary voluntarily reports a return to work, (4) when a notice is received that the beneficiary has successfully completed a VR training program, and (5) in any other situation not listed as an exclusion (see subsection (*c*) below).

Suspension action will not be taken until the beneficiary has been notified of the proposed suspension, the information and evidence upon which it is based, and given an opportunity to submit rebuttal information and evidence. Moreover, when the evidence materially conflicts *in any way* with the beneficiary's assessment about his engaging in SGA, the proposed date of cessation, entitlement to a trial work period, or where evidence is received from a 3rd party (e.g., employer), the beneficiary must be contacted by the DO to resolve the conflict (or to confirm 3rd party evidence) before

"due process" is satisfied and a cessation determination can be prepared by the SA (§ 6705.3(c)).

(2) BDI REVIEW AFTER INITIAL DEVELOPMENT

When Form SSA–821(a) is returned by the beneficiary, BDI will review the response to first determine whether an issue of continuing disability is actually present. Certain situations, e.g., (1) the beneficiary is entitled to additional months of a TWP, (2) posted or reported earnings represent sick or vacation pay or are otherwise determined *not* to represent actual work, or (3) earnings are clearly below the SGA level, are disposed of as "no issue" cases and notification is sent by BDI to the beneficiary that benefits are continued. Cases where a substantive issue is present will be sent by BDI to the SA for adjudication. When Form SSA–821(a) is not returned by the beneficiary or is returned and the responses are inadequate or the information submitted creates a conflict, BDI will request assistance from the DO (see § 6705.3).

(c) DO Development and Review of Evidence—Complex Work Issues

Because of special developmental requirements, the following categories of work issues will not be developed by direct mail by BDI: (1) self-employment work activity cases, (2) agricultural employment cases, and (3) voluntary reports of work activity before a medical reexamination diary has matured.

In these situations, BDI will forward the folder to the DO to conduct a personal interview (either by telephone or face-to-face) with the beneficiary and complete Form SSA–821. The DO will clearly explain to the beneficiary that his benefit payments may be stopped as a result of this investigation, and that he has the right to submit any evidence or make any statements he desires to be considered. If the beneficiary wishes to make any statements, use Form SSA–795 (Statement of Claimant or Other Person). If the beneficiary desires to submit additional evidence, ascertain what evidence is to be obtained, whether the DO can be of assistance in obtaining the evidence, and where necessary, allow the beneficiary a reasonable period of time (e.g., 10 to 20 days) to gather and present any evidence. The DO should control the case, follow-up to assure the timely receipt of the beneficiary's evidence and annotate the file accordingly.

In all cases the DO will enter in the remarks section of Form SSA–821 (or on an RC), the following statement—"The Beneficiary was informed on _____ (give date) that this investigation may result in his benefits being stopped and he has been given the opportunity to submit evidence and make any statement on his behalf." The DO will follow the instructions in §§ 6705.3 for subsequent processing.

6705.3 District Office Responsibilities—Work Activity

(a) General

While the majority of CDI's involving work issues will be sent by BDI (following development) directly to the SA for adjudication or handled as "no issue" cases by BDI, in certain cases the DO will be required to develop evidence in greater detail or to clarify conflicts in the existing evidence.

(b) Request for Assistance From the Beneficiary

As indicated in § 6705.2, BDI sends the beneficiary a questionnaire on work activity (Form SSA–821(a)). The form advises the beneficiary to call or visit his Social Security office if he has any questions or difficulty in completing the questionnaire. In the event a beneficiary does call or visit regarding the questionnaire, the DO will give him all the assistance he requires, including assistance in completing the Form SSA–821(a).

If the beneficiary comes to the DO without Form SSA–821(a), the DO will complete Form SSA–821, following the procedures in § 6712, and forward the material to BDI. Also, where it is apparent to the DO that the evidence presented by the beneficiary will result in termination of benefits, the DO should explain this to the beneficiary to prepare him for the subsequent check stoppage. The DO will document the file with an RC. (If a beneficiary reports by mail (i.e., Form SSA–612 or letter) or by telephone that he has returned to work, acknowledge receipt of the information (send a replacement Form SSA–612 when necessary) and ~~forward to BDI for initiation of a CDI.)~~

(c) Request for Assistence from BDI

The following types of cases will be sent to DO's for their assistance in resolving work issues.

(1) BENEFICIARY DOES NOT RESPOND TO QUESTIONNAIRE

Where the beneficiary does not respond to the questionnaire within 45 days, BDI will send the case folder and a new SSA–821(a) to the DO with a request to contact the beneficiary and assist him in completing the questionnaire. Upon completion of the questionnaire, (see following subsections for

[Use procedures in § 6730 §§. if the reported event results in a CD issue, otherwise, proceed to 302 §§ - disposition].

development techniques)the DO should mail the completed form and other evidence to BDI or SA immediately (see subsection (e) below).

Should contact with the beneficiary reveal that he has already mailed the questionnaire to BDI, the case folder should be immediately returned to BDI with the notation "Beneficiary mailed SSA–821(a)to BDI on _____ (give date, if available)."

(2) BENEFICIARY'S ANSWERS TO THE QUESTIONNAIRE ARE INCOMPLETE OR INADEQUATE

Where the beneficiary's answers to the questionnaire are considered incomplete, inadequate or illegible, BDI will send the case folder to the DO explaining what development is needed. When interviewing the beneficiary, the DO will explain why additional evidence is being obtained. The case should then be processed in accordance with the instruction in subsection (e) below.

(d) Need for DO To Resolve Conflicts

(1) BENEFICIARY'S ANSWERS CREATE A CONFLICT IN THE FACTS

When the evidence points to a cessation but a material conflict arises from the beneficiary's answers on form SSA–821(a) (or other evidence), BDI will forward the folder and other evidence to the DO to contact the beneficiary and to resolve conflicting facts. The DO should inform the beneficiary by mail (or personal contact) of the conflicting statements. Copies of all correspondence sent the beneficiary must be included in the file. When an oral contact is made, the DO must fully document its file to show the reason for the contact and the results of the interview. Include in the file any additional information or evidence submitted by the beneficiary.

Also, where it appears clear that a cessation of benefits will result, the district office should advise the beneficiary of the reasons why such action may be required, and if necessary, explain to him the pertinent provisions of the law. The DO should document the file accordingly (see (2) below where there is a misunderstanding of disability policy). See § 6706(f) for due process requisites prior to suspension.

(2) CONFLICTS OF UNDERSTANDING

Where there is a conflict of understanding (e.g., it is evident that the beneficiary does not understand SSA policies) or of the legal significance of the facts (e.g., beneficiary states on form SSA–821 (a) that he does not believe facts justify termination of benefits), the DO will be required to contact the beneficiary in an effort to resolve the misunderstanding. The DO should explain to the beneficiary the rules in question and the significance of the facts, how they are applicable to his case, and that the rules or facts may result in the termination of his benefits.

Reference to the "Rights and Responsibilities" booklets and other informational material available should be made by the DO. The DO should always document the file fully with an RC, and where the beneficiary desires to make a statement, it should be recorded on form SSA–795.

(3) EVIDENCE FROM THIRD PARTY

When evidence in support of a cessation is not received from the beneficiary himself or from the payee, the beneficiary or payee should be advised of the evidence received and given the opportunity to object if he believes the evidence is not correct. When the beneficiary is in disagreement with the evidence, the DO should provide whatever assistance the beneficiary needs to obtain additional evidence.

(e) Routing Procedures

The following routing procedures should be followed by the DO.

(1) FORWARD FOLDER TO SA

The DO has the folder when it finds that the beneficiary completed or is not entitled to a trial work period and his earnings average more than $140 per month.

(2) FORWARD FOLDER AND/OR CD EVIDENCE TO BDI

All instances where the beneficiary visits the DO for help in completing the questionnaire *and* association of the Form SSA–821(a) or Form SSA–821 with the case folder is required.

Folder is in the DO when the DO finds that there is no issue; e.g., (1) the beneficiary's earnings average $140 or less per month and it is clear his work is not comparable to that of unimpaired workers in his community engaged in similar occupations as their means of livelihood (§ 6411), *or* (2) the beneficiary has *not* completed his TWP or (3) earnings-postings represent sick, vacation or other special pay.

mailing of Form SSA–821(a), the beneficiary must be notified about the information which prompted the proposal before any suspension occurs.

If suspension seems proper but the beneficiary has not been given advance notice or an opportunity to submit rebuttal evidence, BDI will send the case folder to the DO without suspending benefits. The DO will be requested to contact the beneficiary, explain the purpose of the information being sought and have him complete the necessary forms (see §§ 6710 ff). Where the folder is to be sent to the SA, the DO should request suspension of benefits after complying with §§ 6707 and 6716. The due process requirements for notice and opportunity to submit rebuttal evidence are not satisfied just because, in the course of SSA's investigation, the beneficiary was informed of the *possibility* that information in SSA files might warrant a suspension (see § 6707).

6707. District Office Notice to Beneficiary of Proposed Suspension Action

(a) General

Before requesting BDI to suspend benefits (see § 6706) the DO should (1) inform the beneficiary (or payee) of the proposed suspension action, (2) provide him with a brief summary of the evidence on which the proposed suspension action is predicated, and (3) give the benfieciary a reasonable opportunity (e.g., 10 working days) to respond in writing if he desires. If the beneficiary desires to obtain additional evidence which he believes may be material in support of his claim to continued benefits and needs more time, he may be granted an additional period of time (e.g., 20-30 days) to present such evidence. The DO should establish controls and, depending on the individual case situation, follow up at the appropriate time.

The above notice will usually be given in person at the time the beneficiary provided the information that establishes a basis of a determination of cessation. When the information was not provided during a personal contact, the DO will telephone the beneficiary or contact him by mail. Documentation is required: a copy of the letter (see subsection (*b*) below) if a mail contact is necessary, or an RC when contact is in person or by telephone. Do not delay forwarding a folder when the beneficiary clearly understands the reasons for suspension and his right to submit rebuttal evidence, offers no objection to the proposed suspension, and the report on which the suspension is based was submitted by the beneficiary (or his representative payee, if he has one).

(b) Mail Contact With Beneficiary Necessary

Where the DO has evidence sufficient to recommend suspension (see subsection (*a*) above) and a mail contact is necessary, the letter (in addition to advising the beneficiary of the proposed suspension action and the reasons) should conclude with a paragraph along the following lines: "If you have any additional information you want us to consider, please let us know immediately, using the enclosed envelope. A reasonable amount of time will be granted, if necessary, for you to obtain and submit additional evidence. If we do not hear from you within 10 days, we will recommend that benefits be suspended." The DO will enclose a self addressed, postage-free return envelope for the beneficiary's response. When the beneficiary does not respond within 15 days or makes it known that he has no additional evidence to submit, request BDI to suspend benefits (see § 6706(*d*) above), attach Form SSA–529 (see § 6716), and forward folder to SA or BDI, as appropriate. (If the DO does not have folder, forward material to BDI.)

6708. Cessation of Disability

Cessation of disability will be found effective with the earliest month in which one of the following applies:

(a) Medical Recovery

In the month medical recovery is established by the medical evidence.

(b) SGA—Medical Recovery Not An Issue

If medical recovery is not an issue, cessation will be found effective as of the first month after 9 months of trial work in which the individual is able to engage in SGA. It is not necessary for the beneficiary to be engaging in SGA or still working in the month of cessation. For example, if an individual stopped working in the ninth month of his TWP for reasons not related to his impairment, cessation may still be found in the 10th month if his work activity during the completed TWP *clearly* demonstrated a continuing ability to engage in SGA. If the TWP does not apply (e.g., DWB, freeze only, no waiting period cases), cessation will be found effective as of the first month in which the individual engages in SGA, or if he previously completed 9 months of his TWP, as of the month he returns to work which is SGA.

6709. Termination of Benefits

Disability benefits are payable, and the period of disability continues, for the month in which the disability has ceased and for the two succeeding months. Thus the month of cessation of disability and the month of termination of benefits or of the period of disability are different. For example, a beneficiary (entitled to a TWP) could work for a period of 9 months with cessation in the 10th month, and receive benefits for the 10th, 11th and 12th months. Even if the cessation is based on reasons other than engaging in SGA (e.g., medical recovery), the beneficiary (and any auxiliary beneficiaries) is entitled to receive benefits for the month in which disability ceased plus two additional months.

COMPLETION OF CONTINUING DISABILITY FORMS

6710. Form SSA–454—(Report of Continuing Disability Interview)

(a) General

Form SSA–454 (Report of Continuing Disability Interview) has been designed to aid the interviewer in securing and reporting information about changes in and treatment of the beneficiary's condition, as well as the effect the impairment continues to have on his ability to perform SGA. The information obtained should describe what changes, if any, have occurred since the last interview in which this type of information was obtained. Space is provided on the Form SSA–454 to record the interview. It is a self-contained report of the interview. (See § 6749.)

If any section of the Form SSA–454 does not provide sufficient space to record the interview, a Report of Contact should be used as a continuation sheet.

The following describes each section in the form SSA–454.

(b) Section I—Medical Care and Treatment

This section is designed to elicit from the beneficiary a complete description of all medical care and treatment since the initial interview (or most recent CDI) description of the beneficiary's medical history was obtained. He should be asked to relate the information in his own terms and in chronological sequence.

The question at the top of this section should be checked, "No," only if the beneficiary has not contacted some medical source (hospital, clinic, laboratory, physician). If any medical source has seen, treated, examined, or "checked-up" on the beneficiary's condition, that source should be identified in the space provided. This identification should include (*a*) the full name, address, and, where possible, telephone number of the source, and (*b*) approximately how frequently the beneficiary was seen, with dates, if known, e.g., once a week since September 1971.

Additionally, a narrative description of the beneficiary's current treatment and/or limitations placed on him by the physician should be given.

EXAMPLE: "On the advice of his doctor, the beneficiary spends 1 hour each morning with his left hand and wrist in hot paraffin. Once a week Dr. Smith gives him a cortisone shot."

NOTE: Any period of home confinement since the last application or continuing disability interview should also be described. The beginning and ending date of each period of home confinement should be noted along with a description of the condition that caused the confinement.

(c) Section II—Progression of Condition

The information to be recorded in this section should describe the changes in the beneficiary's condition since the last interview in terms of symptoms, physical limitations, and activities. If there has been no change it is only necessary to check the "No" block at the top of this section. However, if there has been any change, a "Yes" check should be made and a full description recorded, e.g., increases or decreases in symptoms should be described in terms of the type of change (frequency, severity, precipitating factors) and the dates when the changes occurred.

(d) Section III—Current Condition

A description of how the beneficiary's condition currently interferes with his ability to work should be recorded in this section. (Where Form SSA–821 is obtained, this section need not be completed.)

EXAMPLE: "Beneficiary states that both of his hands are so weak, painful, and stiff that he is unable to pick up and hold the nails, or grasp and swing a hammer with strength. He also stated he cannot carry the bundles and rolls of materials that are required of a roofer, his sole occupation for the last 22 years."

(e) Section IV—Daily Activities

This section should describe, in specific terms, the activities of a typical day and the limitations,

special pay (e.g., sick pay, vacation pay, back pay, or bonus). Instead, record on an RC complete information identifying and explaining the payments. Complete item III of the SSA–881 and write in Remarks "Posted Earnings Do Not Represent Pay for Work," and forward with all material to BDI.

In cases where suspension is requested as in (*b*)(1) and (*c*)(1) above, request suspension by wire and complete item III of the SSA–881 including the date the action was taken. Forward all material with the case folder to the SA. If you do not have the case folder, request suspension by SSA–725, complete item III of the SSA–881A, and send all material with the SSA–725 to BDI.

6736. Special Continuing Disability Situations.—The following listing of special continuing disability situations (§§ 6736.1–6736.8) provides instructions which supplement and in some cases supersede those instructions in §§ 6732 and 6734.

6736.1 Disabled Individual Deceased.—Record the information in Item 1A on the SSA–881 showing the date of death. Send the material to BDI.

6736.2 Individual Is Hospitalized.—(*a*) *No work.*—If the individual is hospitalized and has done no work, complete Item 1B of the SSA–881 and return to BDI.

• (*b*) *Work less than 9 months.*—If the individual is hospitalized and the CD issue arose because of work activity and the individual has worked in less than 9 months of his TWP, complete Item 1B of the SSA–881A and write, "Currently hospitalized" in the Remarks section or complete Items 1B and 1D of the SSA–881. Return to BDI.

• (*c*) *Worked 9 or more months or not entitled to a TWP.*—If the individual is hospitalized and the CD issue arose because of work or he is not entitled to a TWP, a personal contact should be made except when (1) the individual is confined in a hospital or institution for the criminally insane, or (2) the hospital feels that the contact would be detrimental to the individual's health. In this situation, try to obtain the information from the employer or an interested party. Complete an SSA–821(s) and Item 11E of the SSA–831 or Item 11D of the SSA–881A. Insert in the remarks section of these forms, "Currently Hospitalized." Forward all material with the case folder to the State agency. If you do not have the case folder, send the material to BDI.

NOTE: Full development per § 6732 should be obtained if the person has been discharged, or is on a trial visit (e.g., convalescent status, parole, family care, foster care, community residence). Nursing homes, county homes, VA domiciliary centers, etc., are not hospitals in this context.

6736.3 Cases Involving Mental Illness.—When a disabled individual has been released from the hospital in the custody of another person, obtain the information required in § 6732 from the custodian. When the disabled individual has been released in his own custody, the DO may ask the hospital if it would be preferable to contact a relative or friend instead of the individual himself.

6736.4 Failure To Cooperate.—There may be instances where an individual does not furnish information about work activity, medical treatment, etc., or otherwise fails to cooperate with efforts of the DO to complete a continuing disability interview. When this situation arises, assume that the individual is unable rather than unwilling to cooperate since his failure to cooperate may be due to the nature of his impairment or a restriction resulting from the impairment or for other good cause. Consequently, all reasonable effort should be extended in every case requiring a continuing disability investigation.

When a beneficiary fails to comply with a written request for information, personal contact should be attempted. If the DO is unable to get in touch with the individual by telephone, a home visit should be made. In either event, an explanation that his failure to cooperate by a specific date (generally 2 weeks should be specified from the last contact, whether it be by personal interview, telephone, or when these are not possible by a letter) may result in the termination of his benefits will be transmitted to the beneficiary, either orally or in writing. If a mental condition is involved, it may be more prudent to contact relatives, friends, neighbors, or employers for assistance in obtaining the desired information. Sometimes members of the clergy are helpful. Where auxiliary benefits are being paid, the auxiliaries should be contacted, told of the need for cooperation on the part of the beneficiary and of the likelihood that all benefits may be terminated because of his failure to cooperate. When these efforts to obtain the beneficiary's cooperation are unsuccessful, request BDI to suspend all benefits (see § 6716).

It may occasionally be impractical for the DO to interview the individual within a reasonable

period; if the DO cannot make personal contact within 45 days after receipt, the request for a CDI should be returned to BDI with a report of contact explaining why a personal interview was not conducted. Where it appears likely that contact will be made shortly after the 45-day period, retain the file and proceed with the investigation (e.g., a cooperative individual agrees to met the DO representative at the contact station on the next visit which will fall on the 55th day). In the event a personal contact is not possible and the request is returned to BDI, any information obtained about the individual's activities or condition should accompany the file. During efforts to contact an individual, for example, the DO may receive information from relatives, employers, etc., which will enable BDI (or the SA) to make a determination or to suggest a specific type of development. All efforts to communicate with the individual or to have him cooperate, including any explanations given the individual of the effect of his refusal to cooperate, should be fully recorded on dated Reports of Contact. Copies of all correspondence should also be made a part of the file. The accuracy and completeness of the DO development is vital not only as an aid in any further pursuit of the existing issue but because this may serve as the evidence on which a determination as to continuance or cessation of disability may be made.

Upon completion of all necessary DO development and action, complete item III of the SSA–881A and write "failure to cooperate" in the remarks section, or complete Items 11D and III of the SSA–881, attach the RC and forward all material with case folder to the State agency. If the case folder was not sent to the DO, send all the material to BDI for association with the folder.

6736.5 Whereabouts Unknown.—When the beneficiary cannot be located at his last known address and his new address is not readily ascertained, e.g., mail is returned undeliverable, the DO should contact the postmaster with Form SSA–7001 (Postal Card Requesting Address From Postmaster) in an attempt to ascertain the beneficiary's current address. If this effort is unproductive, a personal visit should be made to the beneficiary's last known address. Individual's in the immediate neighborhood—landlord, merchants, neighbors—may have knowledge of the beneficiary's whereabouts. Where auxiliary benefits are being paid, the auxiliaries should be contacted.

Occasionally, individuals with histories of institutionalization for mental or emotional problems can be located through those institutions, even in those situations where the institution had previously given notice of the individual's elopement. Where there are wage postings in the recent past, the beneficiary may be located through the employer (identified by BDPA upon request).

All efforts made to locate the individual should be fully recorded on dated Reports of Contact. If, after exhausting all reasonable efforts, the individual still cannot be located, complete items 11D and III of the SSA–881 or item III of the SSA–831A and write "whereabouts unknown" in the remarks section, attach the Reports of Contact and forward the material and/or folder to BDI without requesting suspension. Upon receipt, BDI will take whatever further action may be appropriate, including suspension of benefits.

6736.6 Report of Disability Interview Limited at Initial Application.—In some cases BDI will request the DO to obtain information about an individual's work history because such evidence is not in file, e.g., the initial report of disability interview was limited because the individual was hospitalized, house-confined, etc. This information will be requested by a check in block 6. a. under remarks on the SSA–881, or by narrative remarks and should be provided in the Vocational Description section of form SSA–401 in addition to the usual CDI development.

6736.7 Beneficiary Wishes To Return Check(s) or Requests Suspension of Benefits.—When a beneficiary wishes to return a check or requests suspension of benefits to which he is entitled (e.g., an individual with an impairment for which medical recovery is not expected and while entitled to a TWP returns to work), find out why he requests such action. If it is clear that he nevertheless is entitled, explain to him that he is entitled to the check. If, after the explanation, he still wishes to return the check or have his benefits suspended, comply with his request. (See §§ 5710 ff. and 6716.) In any case, the DO should initiate a continuing disability investigation. (See §§ 6730 ff.)

6736.8 Participation in Vocational Rehabilitation.—In each CDI the DO will ascertain whether the beneficiary is known to a State Vocational Rehabilitation Agency. In those cases where the beneficiary is being considered for or receiving services from or through the agency, the name and address of the counsel or office servicing him, as

6746. Form SSA–454(a) (Social Security Disability Beneficiary Report) (See § 6705.1)

Refer to
Social Security Number

Date

When your disability payments began, you were notified by the Social Security Administration that your condition might improve and your claim was scheduled for a future review. The Social Security Administration has requested us to develop current evidence as to whether your condition still prevents you from working.

To help us determine whether you are still entitled to disability benefits, please answer the questions on the next three pages, sign your name at the bottom, and return the form within ten days using the enclosed envelope which requires no postage.

If at any time medical evidence shows that your condition has improved so much that you are no longer disabled, you will still receive benefits for a 3-month period of adjustment. This period includes the month in which your condition improves and 2 additional months. Benefits will then be stopped.

If you have questions or need help in filling out the questionnaire, please telephone or visit any social security office. You can find the address in the telephone directory under "Social Security Administration," or ask at your local post office. If you visit the social security office, please bring this letter with you.

Sincerely yours,

SSA-454a (5-72)

BEST COPY AVAILABLE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF DISABILITY INSURANCE

Form Approved.
OMB No. 72-R0310

SOCIAL SECURITY DISABILITY BENEFICIARY REPORT

I understand that this report will be used to verify my continuing eligibility to benefits and should it be determined that I am no longer entitled, benefits will be terminated.

INSTRUCTIONS FOR COMPLETING THE FORM

Answer each question as fully as possible.

If any question does not apply to you, write "none" in the space provided.

If you need more space to answer a question, use the back of this form or a separate sheet of paper. If you use a separate sheet of paper, please be sure to put your social security claim number on it.

Answer all parts of the following questions:

1. (a) Do you feel your medical condition has improved so that you are able to return to work?

☐ Yes ☐ No If No, explain below.

(b) Has your doctor told you that you are able to return to work?

☐ He said Yes If the answer is yes, when?_____ *(give date)*

☐ He said No ☐ He did not say

(c) Has he placed any significant restrictions on the kind of work you may do or how many hours a day you may work?

☐ No ☐ Yes If Yes, explain below

Describe below in your own words your present condition: be sure to list what you believe you are unable to do in terms of lifting, bending, pushing, etc., that interferes with your working again.

FORM SSA-454(a) (5-72)

2. Give name, address and telephone number of your physician(s) and of the hospital or clinic where you have received treatment for the condition that prevented you from working.

(a) NAME OF PHYSICIAN, HOSPITAL OR CLINIC	DATE LAST TREATED
ADDRESS	TELEPHONE NUMBER
(b) NAME OF PHYSICIAN, HOSPITAL OR CLINIC	DATE LAST TREATED
ADDRESS	TELEPHONE NUMBER
(c) NAME OF PHYSICIAN, HOSPITAL OR CLINIC	DATE LAST TREATED
ADDRESS	TELEPHONE NUMBER

3. Have you worked in the past 12 months?

☐ No ☐ Yes *If "Yes," be sure to complete all of the following items.*

(a) NAME, ADDRESS AND TELEPHONE NUMBER OF EMPLOYER			(b) KIND OF WORK DONE	
(c) WHEN STARTED *(Date)*	(d) AVERAGE HOURS WORKED		(e) AVG. GROSS EARNINGS *(Before payroll deduct.)*	
	PER DAY	PER WEEK	PER DAY	PER WEEK

(f) ARE YOU STILL WORKING?

☐ Yes ☐ No *If "No," explain below why and give date you stopped working.*

4. (a) Are you receiving services from or through the State vocational rehabilitation agency?

☐ No ☐ Yes *If "Yes," answer question (b)*

(b) Name and address of servicing rehabilitation office and counselor.

5. Remarks: Enter here any additional information that you believe is important and will assist in the review of your continuing entitlement to social security disability benefits. *(If you need more space, use a separate sheet of paper. Also, if you wish, you may attach any evidence that shows your current condition.)*

6. Do you authorize any physician, hospital, agency, or other organization to disclose to the Social Security Administration or to the State agency that may review your entitlement for continuing disability benefits, any medical records or other information about your disability?

☐ Yes ☐ No

I certify that the above statements are true, correct, and complete to the best of my knowledge. I know that anyone who fraudulently conceals or fails to report a disqualifying event or who makes a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act could be subject to a fine or imprisonment or both.

SIGN YOUR NAME AS YOU USUALLY WRITE IT	DATE	PHONE NUMBER
▶		

If the address shown on page one of this form is incorrect or incomplete please enter your present address below

NUMBER AND STREET, APARTMENT NO., P.O. BOX, OR RURAL ROUTE

CITY	STATE	ZIP CODE

6747. Form SSA–821(a) (Report of Work Activity—Continuing Disability)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BALTIMORE, MARYLAND 21241

BUREAU OF DISABILITY INSURANCE

REFER TO: DI:CE

Date

Social Security Number

Our records show:
☐ That you have worked since _____.
☐ $ _____ has been reported to your social security record for the period beginning _____.

As you were notified, your benefits may be stopped if you are again able to do substantial gainful work. Your medical condition may have improved enough for you to do this. But even if your condition has not improved your work may show that you now have the ability to do substantial gainful work.

The amount of your earnings is important in determining whether you are able to engage in substantial gainful work. The general rule is that if your earnings average more than $140 a month (your pay before payroll deductions), you are performing substantial gainful work. Unless you submit information that establishes that you do not have the ability to engage in substantial gainful work, a determination will be made that you are no longer under a disability and your benefits will be terminated.

Please answer the questions on the next three pages. Sign your name at the bottom of the last page. In order to prevent possible overpayments of benefits to you return the form promptly. Please use the postage-free envelope enclosed. Unless this form is returned within the next 10 days your benefits may be suspended based on the information already in your file. If you need more time please let us know.

If you have any questions, or need help in filling out the form, please telephone or visit any social security office. The people there will be happy to help you. You can find the telephone number and address in the telephone directory listed under "Social Security Administration," or you can ask at your local post office. If you visit the social security office, please take this letter with you.

Sincerely yours,

C. C. Hall
Assistant Director

Enclosure:
Pre-Addressed Envelope

SSA-L821(a) (6-72)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF DISABILITY INSURANCE

Form Approved.
OMB No. 72-R0861

REPORT OF WORK ACTIVITY–CONTINUING DISABILITY

I understand that this report will be used to determine whether to continue or to stop my disability cash benefits and that evidence of continuing entitlement with respect to all matters must be submitted promptly, otherwise my benefits may be suspended based on evidence already in file. Also, I understand that if the work as I describe it does not establish that I am unable to engage in substantial gainful work activity, I will be found to be no longer under a disability and my benefits will be terminated.

1. Have you worked *at any time* since the date shown in the first paragraph of the preceding page?

☐ Yes. If "yes", be sure to answer *all* the following questions. If any question does not apply to you, please explain in the space for remarks (number 10 on page 4).

NOTE:

☐ No. If "no", skip questions 2 to 8 and go to question 9 page 4. (If earnings have been reported to your social security record - see amount entered in the first paragraph of the preceding page - but you have not worked, please explain in the space for remarks - number 10 on page 4 For example state if the amount reported represents sick pay, vacation pay, etc.) *If you cannot account for the reported earnings, please telephone or visit your social security office.*

2. Please furnish the information requested about your present or most recent employer. Use paragraph 7 on page 3 to list any other employers you worked for since the date shown in the first paragraph of the preceding page.

NAME OF EMPLOYER

EMPLOYER'S ADDRESS

DATE YOU STARTED WORKING FOR THIS EMPLOYER	MONTH	DAY	YEAR

3. My total earnings (before payroll deductions) are

Per Week $ _____ or Per Month $ _____ or Per Hour $ _____ —

I am working _____ hours per week or _____ per day.

4. Since you started working for this employer, have there been any months in which your total monthly earnings (before any deductions) were $50 or less?
☐ No ☐ Yes *If "yes", list each month and the amount earned that month.*

5. Are you still working for this employer? ☐ Yes ☐ No

If no, when did you stop working for this employer?	MONTH	DAY	YEAR

Explain why you stopped working

FORM SSA-821(a) (6-72) – 2 –

6.
A. What is your Job Title?

B. Briefly describe your duties

7. If you have worked for other employers since the date shown in the letter on top of this form please furnish the following information for each employer:

(a) Name of employer	(b) Address of employer
(c) Dates of employment	(d) Earnings per month before deductions

(e) Any months where you earned $50 or less

(Use paragraph 10 on page 4 if you need additional space for describing work for other employers.)

8. (a) Has your doctor told you to limit your activities in any way?

☐ No ☐ Yes ☐ Did not say

(b) *If "Yes", give the name of the doctor and what he told you about limiting your activities.*

(c) When did your doctor tell you this?

(d) Does your impairment affect your ability to do your work?

☐ No ☐ Yes *(If yes, explain how)*

9. Are you receiving services from or through the State vocational rehabilitation agency?

☐ No ☐ Yes *If "Yes," give*

Name and address of servicing rehabilitation office and counselor.

10. Remarks: Use the space below for explanation of question number one. Also, enter here any additional information that you believe is important and will assist in the review of your continuing entitlement to social security disability benefits. *(If you need more space, use a separate sheet of paper. Also, if you wish, you may attach any evidence that shows your current condition.)*

11. Do you authorize any physician, hospital, agency, or other organization to disclose to the Social Security Administration or to the State agency that may review your entitlement for continuing disability benefits, any medical records or other information about your disability? ☐ Yes ☐ No

I certify that the above statements are true, correct, and complete to the best of my knowledge. I know that anyone who fraudulently conceals or fails to report a disqualifying event or who makes a false statement or representation of a material fact for use in determining a right to payment under the Social Security Act could be subject to a fine or imprisonment or both.

SIGN YOUR NAME AS YOU USUALLY WRITE IT ➡	DATE	PHONE NUMBER

If the address shown on page one of this form is incorrect or incomplete, please enter your present address below

NUMBER AND STREET, APT. NO., P.O. BOX OR RURAL ROUTE

CITY	STATE	ZIP CODE

If we need more information after you send this form back to us, someone from the social security office or from the State agency that works with us in making disability decisions will get in touch with you.

570-081 O - 75 - 8

6748. Form SSA–821 (Work Activity Report)

Form Approved:
Budget Bureau No. 72-R0529

WORK ACTIVITY REPORT

Complete for all initial cases with work activity after onset, and in continuing disability cases with work activity. (See CM 6400H, 5185H)

SOCIAL SECURITY NUMBER | DATE

OFFICE

CASE EXAMINER'S NAME

NAME AND SOCIAL SECURITY NUMBER OF DISABLED PERSON (If other than W/E's)

PERSON CONTACTED ☐ CLAIMANT ☐ OTHER (If other, show name, address and relationship to claimant)

INTERVIEWER'S SIGNATURE ☐ CR ☐ FR ☐ OTHER (Specify)

PART I – WORK AS AN EMPLOYEE

	DATES WORKED: STARTED (month, day, year)	DATES WORKED: ENDED (month, day, year)	AVERAGE HOURS PER DAY	AVERAGE DAYS PER WEEK
A. WORK ATTENDANCE	/ /	/ /		
	/ /	/ /		
	/ /	/ /		

B. EARNINGS		PER HOUR	PER DAY	PER MONTH		PER HOUR	PER DAY	PER MONTH
	STARTING WAGES				ENDING WAGES			
	STARTING WAGES				ENDING WAGES			
	STARTING WAGES				ENDING WAGES			

TIPS

"IN KIND" (explain)

OTHER (explain)

C. EMPLOYER — NAME, ADDRESS, PHONE NUMBER OF EMPLOYER

D. HOW JOB WAS OBTAINED

E. WORK STOPPAGE — CLAIMANT STOPPED WORKING ☐ YES ☐ NO (If "Yes," give date and explain reason for work stoppage)

CHECK IF ONE OF THE FOLLOWING APPLIES (If one of the items is checked, do not complete the remainder of Part I)

1. ☐ Claimant worked 3 months or less and stopped working because of impairment, or removal of special conditions.
2. ☐ Claimant's earnings as an employee do not exceed $90 per month.
3. ☐ Claimant works in sheltered employment (e.g., sheltered workshop, VA domiciliary) and his earnings do not exceed $140 per month.
4. ☐ Claimant's earnings as an employee exceed $200 per month and there is no evidence of "substantial" subsidy.
5. ☐ In initial case, claimant returned to a job that is described in Section VI (Principal Job) on SSA-401 and there is no change in duties, or special conditions.

FORM SSA-821 (...)

COMPLETE IF NO BLOCK (1 thru 5) ON PRECEEDING PAGE IS CHECKED | JOB TITLE

F. JOB DUTIES: (List duties claimant performs in a typical day, giving percentage of day spent on each duty)

G. SUBSIDY: (Check if any of these items apply. If any of the items are checked, develop subsidy with the employer per (CM 6421)

- ☐ Childhood disability case
- ☐ Mental impairment involved
- ☐ Sheltered employment
- ☐ An allegation is made that the claimant does not fully earn his pay
- ☐ The claimant's job duties differ from those of regular employees
- ☐ The claimant's hours of work differ from those of regular employees
- ☐ The amount of assistance received by the claimant differs from that of regular employees
- ☐ The claimant's work differs in quality or quantity from that of regular employees
- ☐ The claimant receives special considerations in the performance of his work
- ☐ Other indications of subsidy (explain)
- ☐ None

H. COMPARABILITY (CM 6422)

Do the claimant's earnings average between $90–$140 per month in non-sheltered employment after deducting any subsidy? ☐ Yes ☐ No

If "Yes," is the claimant's work comparable to that of unimpaired persons in the community engaged in similar occupations as their means of livelihood, or is the claimant's work reasonably worth over $140 a month according to pay scales in his community. Explain answer in sufficient detail.

REMARKS (Record any unusual aspects of case)

PART II – COMPLETE IF CLAIMANT SELF-EMPLOYED OR WORKS IN A FAMILY OR CLOSE CORPORATION (§§ 5185H)

TYPE OF WORK ☐ NON-FARM SELF-EMPLOYED ☐ FARM SELF-EMPLOYED ☐ CORPORATION OFFICER

NON-FARM BUSINESS	NO. OF EMPLOYEES (Farm and non-farm)	FARM	NO. OF ACRES	TYPE OF CROPS	TYPE AND SIZE OF FLOCKS AND HERDS
☐ SOLE OWNER	FULL TIME	☐ SOLE OWNER	CULTIVATED		
☐ PARTNER	PART TIME	☐ PARTNER	PASTURE		
☐ CORPORATION OFFICER		☐ TENANT	FALLOW		

WORK ATTENDANCE (Dates Worked)		SELF-EMPLOYMENT INCOME		CORPORATION OFFICER	
STARTED (Month, day, year)	ENDED (Month, day, year)	GROSS THIS YEAR	$	SALARY THIS YEAR	$
/ /	/ /	NET THIS YEAR	$	OTHER INCOME THIS YEAR	$
/ /	/ /	GROSS LAST YEAR	$	SALARY LAST YEAR	$
/ /	/ /	NET LAST YEAR	$	OTHER INCOME LAST YEAR	$

CHECK IF ONE OF THE FOLLOWING APPLY *(If one of the items is checked, do not complete remainder of form)*

☐ Claimant worked 3 months or less and stopped because of impairment, or removal of special conditions

☐ In initial case, claimant returned to a job that is described in Section VI (Principal Job) on a SSA-401 and there is no change in duties, or special conditions.

☐ Claimant is a farm landlord AND (1) he is materially participating in the farm operations, AND (2) there has been no significant reduction in his activities, AND (3) his earnings average over $140 per month.

A. CHANGES IN OPERATION SINCE ONSET (Explain and give date such changes occurred for each checked item.)

HAVE THERE BEEN ANY CHANGES IN ANY OF THE FOLLOWING SINCE ONSET?

NON-FARM BUSINESS			FARM		
Volume of Business	☐ Yes	☐ No	Size of Farm Operations	☐ Yes	☐ No
Inventory	☐ Yes	☐ No	Acres under Cultivation	☐ Yes	☐ No
Income Gross	☐ Yes	☐ No	Size of Herds or Flocks	☐ Yes	☐ No
Net	☐ Yes	☐ No			
Number of Employees	☐ Yes	☐ No	Income Gross	☐ Yes	☐ No
Hours Business Open	☐ Yes	☐ No	Net	☐ Yes	☐ No
			Number of Employees	☐ Yes	☐ No

REMARKS

B. MANAGEMENT DECISIONS (Explain and describe management services of claimant and others)

Does claimant make management decisions? ☐ Yes ☐ No

How much time does claimant devote to management services?

Are management services rendered by others? ☐ Yes ☐ No

(If "Yes," by whom, for how much time, and describe such services)

PART II (Continued) – Describe any other services rendered by claimant in operation of business and show time and percentage of time spent in each activity.

C. OTHER SERVICES

Explain any changes since onset and give date of occurrence.

D. ASSISTANCE RECEIVED

Explain nature of assistance ●

Why was assistance given ●

How many assistants ●

How much time does assistant(s) devote to farm or business ●

Describe duties of assistants ●

Was payment made for this assistance
If "Yes," how much and to whom ●

Is there any relationship between claimant and assistants ●

Estimate of value of unpaid assistance
(use prevailing local wage rates) ●

E. OTHER FACTORS (Complete in all cases)

How does business compare with similar ones in the same area

Size ●

Type ●

Hours of business or farm operation ●

REMARKS *(Record any unusual aspects of case)*

6749. Form SSA–454 (Report of Continuing Disability Interview)

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Form Approved
Budget Bureau No. 72–R0193

REPORT OF CONTINUING DISABILITY INTERVIEW
(Write Legibly)

OFFICE | DATE

CONTACT MADE: ☐ IN PERSON ☐ TELEPHONE

PLACE OF CONTACT: ☐ DO ☐ CS ☐ HOME ☐ OTHER

WAGE EARNER'S NAME | ACCOUNT NUMBER | CLAIMANT'S NAME (when claimant is not wage earner)

PERSON(S) CONTACTED: ☐ CLAIMANT ☐ OTHER *(If other, show name, address and relationship to claimant)*

INTERVIEWER'S SIGNATURE ☐ CR ☐ FR ☐ OTHER

I. MEDICAL CARE AND TREATMENT

Has the claimant been examined, treated, or hospitalized since the last application or last continuing disability investigation? ☐ YES ☐ NO *(If "Yes," complete the rest of item.)*

Identify all sources that have treated or examined the claimant since the last application or continuing disability investigation, whichever is later.

NAME, ADDRESS, AND PHONE OF PHYSICIAN, HOSPITAL OR CLINIC	DATES WHEN CLAIMANT SEEN

Describe treatment and limitations placed by the claimant's physician.

Describe periods of home confinement
- Dates confined
- Causative condition

II. PROGRESSION OF CONDITION

Have there been any changes in symptoms, physical limitations, or activities since the last interview? ☐ YES ☐ NO

If yes, describe fully all changes in condition (with dates) since last interview.

FORM SSA–454 (6-69)

(If Additional Space is Needed, Use Form OAC–5002.)

III. CURRENT CONDITION

Describe in the words of the claimant how his condition currently interferes with his ability to work.

IV. DAILY ACTIVITIES

Describe only the activities of a typical day that have changed since they were last reported.
- Physical
- Mental
- Contact with others

Describe assistance required in caring for personal needs.

V. EFFORTS TO WORK – Has the claimant performed any work since the established onset date that is not described in the file? ☐ YES ☐ NO *(If "Yes", complete an OA-D831 for each job)*

VI. VOCATIONAL REHABILITATION – Is the beneficiary being considered for or receiving services from or through the State Vocational Rehabilitation Agency?
☐ YES ☐ NO *(If "Yes," record (1) the name and address of the counselor and servicing office, (2) the type of services being received.)*

VII. OBSERVATIONS – Are the alleged impairment(s) observable? ☐ YES ☐ NO ☐ TELEPHONE CONTACT

Sight	☐ Yes	☐ No	Hearing	☐ Yes	☐ No	Comprehending	☐ Yes	☐ No
Reading	☐ Yes	☐ No	Use of hands and arms	☐ Yes	☐ No	Breathing	☐ Yes	☐ No
Responding	☐ Yes	☐ No	Writing	☐ Yes	☐ No	Sitting	☐ Yes	☐ No
			Speaking	☐ Yes	☐ No	Walking	☐ Yes	☐ No
						Other	☐ Yes	☐ No

Check each item to the left to indicate whether or not any difficulty was observed.

Describe fully
- General appearance
- Behavior
- Outward attitude
- Circumstances surrounding the interview
- All "Yes" checked items above.

(If Additional Space is Needed, Use Form OAC-5002.)

T6260. DISTRICT OFFICE RESOLUTION OF WORK ISSUES

(a) DO Determines Work is SGA

District offices will resolve work issues where the question is solely whether or not the individual is or was engaging in substantial gainful activity (SGA). Where the work is determined to be SGA, prepare the SSA-831 (Disability Determination and Transmittal) in initial determinations of denial unless a visual impairment is alleged (§T6265(a)(4)) and in reconsideration of initial determinations. In continuing disability determinations (including reconsideration of cessation), complete the SSA-833 (Cessation or Continuance Disability Determination and Transmittal).

(b) DO Determines Work is Not SGA

If the DO determines that the work activity is not SGA, record this determination on an SSA-553 (Special Determination) and send the case to the SA or BDI in accordance with §T6265 and §T6266.

(c) Development Requests

If the DO has a request from the SA or BDI for development of a work issue but does not have the file, complete the development and forward it to the requestor. An SSA-831 or SSA-833 should not be completed without the folder; therefore, when the folder is not in the DO, prepare an SSA-553 and forward it with the development.

T6261. STATE AGENCY RESPONSIBILITIES

The SA will adjudicate medical-vocational issues in initial and reconsideration level cases and continuing disability investigations and make work-comparability decisions for the special definition of blindness for individuals age 55 and over. If in the course of its development of a case, the SA learns that the claimant or beneficiary is working, it will send the file to the DO for development and resolution of the work issue, unless there is sufficient information for a decision on other grounds (e.g., a medical-vocational denial, closed period of disability, or the claimant is entitled to a TWP). Generally, no medical or vocational development will be requested pending resolution of the work issue, and any evidence that had been requested earlier will be associated with the folder.

T6262. BDI RESPONSIBILITIES

(a) Claims Review

BDI will review those cases with a category checked in item 2 of the flag SSA-2822 (§T6276, Exhibit 2) and a sample of those cases which do not have a block checked in item 2. The DO copy of the approved SSA-831 or SSA-833 will be released, and the notification mailed to the claimant. If the DO decision is not approved, the file will either be sent to the DO for additional work development or to the SA for a medical-vocational determination. BDI will advise the DO why any DO SGA decision is not approved.

(b) Investigation of Work After Entitlement

BDI will screen and process all voluntary reports of work received by BDI (see §6705(a)), all the work activity alerts and job 455 printouts (see §§6705.2 and 6743), and maintain the TWP and medical diaries (see §6703ff).

BDI is responsible for initialing, controlling, and taking followup action for the direct mail development of work issues with disability beneficiaries. It will review the completed questionnaires, SSA-821(a) (Report of Work Activity - Continuing Disability) for completeness, and to determine if an unresolved question of continuing eligibility exists and initiate further development where indicated. Complex work issues and cases excluded from the direct mail procedures will be sent directly to the DO for investigation.

If BDI's review of the completed SSA-821(a) establishes that the evidence in file is sufficient to make a determination of continuance or cessation of disability, it will prepare the determination and notify the beneficiary. If BDI's review indicates that further development is needed, it will refer the case to the district office for processing.

T6263. DISTRICT OFFICE RESPONSIBILITIES IN CONTINUING DISABILITY INVESTIGATIONS

The DO is responsible for developing work activity in all continuing disability investigations referred by the SA or BDI, as well as in all cases in which the beneficiary reports to the DO that he has returned to work and the report raises a continuing disability issue. Where work activity is being investigated as a result of a SA or BDI referral (i.e., the DO has the case folder) it will be necessary for the DO to prepare or update the OAAD-299 (Trial Work Period Tally Sheet). (See § T6276, Exhibit 4.) This form should be placed inside the folder on the left under all other material. The DO reviewer should place an "X" in each month that the WE, child, or self-employed person, while entitled to benefits, performed "services" (i.e., work activity in employment in a month performed for remuneration or gain amounting

to more than $50.00 either in cash or in kind. Services in self-employment should only be counted when net earnings in a calendar month are more than $50.00 or the self-employed persons spends more than 15 hours in that month in work activity). Upon completion of the entries, the DO reviewer will sign and date the form and indicate the last month and year for which he has made an entry. Where the beneficiary has completed his TWP (see §6703ff) the DO will secure an SSA-821 (Work Activity Report), and SSA-454 (Report of Continuing Disability Interview), and develop the work activity issue fully per §6705.2 and 6705.3.

In addition, the DO is responsible for assuring that the beneficiary understands that the investigation may result in his benefits being stopped and that he has an opportunity to submit any evidence that may have a bearing on the decision. When appropriate, the DO will explain why it appears that the work the beneficiary is doing is indicative of SGA. The DO will fully document the file with respect to these actions, prepare a determination using an SSA-833 (Cessation or Continuance Disability Determination and Transmittal), and assign the appropriate notification. The rationale will be given on SSA-834 (Continuation Sheet for Disability Determination). Cases with sensitive or complex issues are to be flagged (§T6272). In any determination of cessation, consider the beneficiary's right to due process (advance notice) before benefits are stopped (§§6705.3, 6706 and T6273).

T6264. SUBSEQUENT NOTICE OF WORK ACTIVITY AFTER NEW CLAIM LEAVES THE DISTRICT OFFICE

(a) Claim Sent to State Agency

When the DO receives notice of work activity after the case is sent to the SA, it should first notify the SA by telephone and then obtain enough information from the claimant to determine whether he engaged in SGA according to the criteria in §6403. If the claimant has resumed working and still wishes to pursue his claim, obtain a work activity report (SSA-821) per §6445. If the evidence confirms that the claimant engaged in SGA, the DO should request the folder from the SA by telephone in order to complete the SSA-831 and forward the claim to BDI. The SA will return the folder unless it can readily make a medical-vocational denial, or the DO can furnish the SA with sufficient information about the work to establish a closed period or TWP. If the conclusion is that the claimant did not engage in SGA, an SSA-553 (Special Determination) should be prepared and forwarded to the SA with the development.

(b) Claim forwarded to BDI

If the DO receives its copy of the SSA-831 showing that the SA allowed the claim and the file was sent to BDI, do not request the folder but notify BDI immediately by teletype that the claimant returned to work and forward to BDI development and a special determination (SSA-553) showing that the claimant did or did not engage in SGA.

T6265. CASES TO BE SENT TO STATE AGENCIES

The following cases will be sent to the SA unless they are otherwise excluded from SA jurisdiction (§§6252-6254, T6266). Prepare an SSA-553 concerning the SGA issue (§T6268).

(a) Initial Disability Claim (Complete Items 1 through 23 of the SSA-831 (Disability Determination and Transmittal) (§6272)).

(1) Work Activity Not SGA

The claimant is engaging in work activity at the time of filing but the DO concludes that the work activity is not SGA.

(2) SGA Ceased

The claimant was engaging in SGA after alleged onset but ceased SGA. The reason for discontinuance or reduction of work should be developed (§6452).

(3) Current Work is SGA But a Closed Period of Disability Is Possible

A closed period of disability may be found if the claimant did not engage in SGA due to an impairment during the 12-month period before he returned to work.

(4) Alleged Visual Impairment

A DIB or Freeze claimant of any age, or a CDB claimant age 55 or over is engaging in SGA but alleges a visual impairment, and disability was not previously established. If disability was previously established, see §6252.6.

(b) Initial Continuing Disability Cases (Complete items 1 through 6 of the SSA-833)

The claimant is not engaging in SGA, or the work is protected by the TWP and there is an issue of medical recovery, as indicated by:

(1) Medical Diaried Case (see item 33 - if blank see item 42 - of most recent SSA-831, or item 25 of SSA-833 on left side of folder)

(A) The beneficiary returned to work; or

(B) the diary has matured or will mature within 2 months.

(2) All Cases, Diaried or Non-Diaried

(A) The individual applies to become his own payee; or

(B) New Medical evidence or allegation indicates medical improvement.

Whenever an initial continuing disability case is sent to the SA for resolution of a medical issue, obtain an SSA-827b for the SA's use in current medical development. In addition, secure an SSA-821 and/or SSA-454 as needed (§6732) but do not prepare an SSA-831 or SSA-881A. Instead, prepare an RC showing the reason under (1) or (2) above that a medical issue exists and notify the beneficiary that his file is being sent to the SA for review.

(c) Reconsideration Cases

Route to the SA any initial denial in which the DO on reconsideration finds that the claimant is no longer engaging in SGA.

Route to the SA any SGA cessation in which the DO on reconsideration finds that the claimant is no longer engaging in SGA and there is a medical issue as evidenced by a medical reexamination diary date or other indications of possible medical recovery (§6732). Where required, update the medical and vocational evidence before forwarding the case (§6582).

Note: If the basis for the initial denial or the cessation was SGA and the reconsideration evidence now shows that the claimant or beneficiary was not engaging in SGA, carefully set forth on the SSA-553 the reasons why the prior determination is being reversed. These cases may be identified by "Reg-Basis Code" "N1-1532" or "N2-1532" (DIB or CDB case) or "N1-1504" or "N2-1504" (DWB case) on SSA-831, or by the rationale on the SSA-834.

(d) Reopenings

(1) Additional evidence shows that the prior SGA denial was improper.

(2) Additional evidence shows that a cessation based on SGA was improper and there is a matured medical reexamination diary or indication of medical improvement.

T6266. CASES TO BE SENT TO BDI

The following cases will be sent to BDI after the DO resolves all work issues, gives advance notice if required under §T6273, and prepares an SGA determination.

(a) Initial Disability Claims

The DO concludes that the claimant is engaging in SGA. (Closed period cannot be established §T6265(a)(3)--visual impairment not alleged §T6265(a)(4)). Complete the SSA-831 (§T6269).

(b) Initial Continuing Disability Cases

The SA or BDI has requested DO development of a work issue or a CDI is initiated per §6730(b) and the DO determines that the beneficiary:

(1) is engaging in SGA and the TWP has expired (or the beneficiary is not entitled to TWP - see §6703.2); or

(2) is not engaging in SGA and there is no medical issue (§T6265(b)). Complete the SSA-833 and SSA-834 (§T6271); or

(3) has a trial work period in progress.

(c) Reconsideration Cases

(1) Claimant engaging in SGA. Complete an SSA-831 (§T6270) or a SSA-833 (§T6271). If the DO is unable to obtain the folder, a determination should not be made on SSA-831. However, all SGA development should be completed and sent with the Reconsideration request and a Special Determination (SSA-553) to BDI, using Part 3, Block 1.B. of SSA-1415.

Note: If the initial denial or cessation was on the basis of SGA, the determination should be completed by a claims representative or other authorized person other than the one who completed the initial determination.

(2) If disability was ceased on the basis of SGA as shown by the rationale on the SSA-834, but the reconsideration evidence shows that the beneficiary was not engaging in SGA and there is no matured medical reexamination diary or indication of medical improvement, complete an SSA-833 (§T6271).

(d) Reopening

(1) Initial SA allowance-subsequent evidence shows claimant engaging in SGA.

Evidence shows that the claimant was engaging in SGA before expiration of the waiting period or prior to the date of award (§6736.9). If the DO has the folder it will determine if reopening and revising the prior determination is proper under the rules of administrative finality (§7000ff). Consider the beneficiary's right to due process (advance notice) before benefits are stopped based on the revised SSA-831, §T6270, T6723.

(2) Additional evidence shows that a cessation based on SGA was improper and there is no matured medical diary or admission of medical recovery. Prepare a determination of continuance on SSA-833 and SSA-834 (§T6271).

T6267. CONSIDERATIONS IN RESOLVING WORK ISSUES

An SGA denial or cessation must be based on evidence establishing that the work activity demonstrates a continuing ability to engage in SGA, considering the hours, earnings, and duration of the work. Total monthly earnings at an SGA level generally are indicative of an ability to engage in SGA. However, if it appears that the sustained work requirements are incompatible with the individual's physical or mental limitations due to his impairment, the DO should be alert to the possibility of an unsuccessful work attempt. Case experience has shown that where an employer provides "made" work or special conditions, or a self-employed person receives unpaid assistance from family members or others, the value of the individual's services may be substantially less than the remuneration. In those circumstances, and the situations listed below, information about the job duties, hours, responsibilities, and other factors relating to the value of the services is necessary to resolve the work issue:

(a) Childhood disability;

(b) Mental impairment;

(c) Employment in a therapeutic program;

(d) Allegation that work is "made" work or that all or a portion of pay is a subsidy;

(e) Self-employment on a family farm or in a family business;

(f) Employment in a sheltered workshop or other institutional program;

(g) Alleged unpaid assistance from family members or others;

(h) Self-employment in which it is alleged that significant services were not rendered; and

(i) Any other situation in which the work requirements are apparently incompatible with the individual's physical or mental limitations.

The guides in §6400ff will apply in developing and resolving work issues.

T6268. PREPARATION OF THE SSA-553 (SPECIAL DETERMINATION)

When a case is transmitted to the SA in accordance with §T6265 or to BDI in accordance with §T6264(b) or §T6266(c)(1) prepare an SSA-553 as needed. Set out your findings and conclusion that the work activity being performed by the claimant does not constitute SGA. If the earnings exceed $140 a month, the determination should show to what extent the work is subsidized, the claimant receives unpaid assistance. or he incurs impairment related expenses. Cite appropriateclaims manual references from § 6400 ff. to support the determination.

T6269. COMPLETION OF THE SSA-831--DENIAL OF INITIAL TITLE II DISABILITY CLAIM (FOR TITLE XVI CASES, SEE §A6278).

When the conditions in §T6266(a) are met, the DO will fully prepare the SSA-831. Complete Items 1 through 23 in accordance with §6272 and the additional items indicated below:

Item 26 - Check this block when the insured status (DIB case) or prescribed period (DWB case) requirement is last met prior to the date of the current determination. Enter the date the insured status or prescribed period requirement is last met.

Check this block in a CDB case (where there was no prior CDB entitlement) if the claimant engaged in SGA before he attained age 22. Enter the date the claimant attained age 22. In a CDB reentitlement claim, check this block when the reentitlement period has expired. Enter the last day of the reentitlement period.

Item 27 - Check this block when the insured status (DIB case) or prescribed period (DWB case) requirement continues to be met through the date of the current determination.

Check this block in a CDB case (where there was no prior CDB entitlement) if the claimant began engaging in SGA after he attained age 22. In a CDB reentitlement claim, check this block if the claimant began engaging in SGA after the end of the reentitlement period.

Item 29 - Enter "None established."

Item 30 - Enter the code letter shown before the checked block from item 6 of the SSA-16 or item 7 of the SSA-17, e.g., a,b,c, etc.

Item 31 - Refer to Item V or VI of the SSA-401 and show in the "Vocational Background (Occupation)" block the claimant's customary occupation or, if not determined, the longest full-time occupation in the 15-year period immediately preceding the alleged date of onset of disability. The entry should indicate both the industry and the specific job title involved, e.g., coal mining, coal cutting machine operator.

Show in the "Occupational Years" block the number of years that the claimant worked in his customary occupation, if determined, or if not determined, in his longest full-time occupation. When there are broken periods of employment in that occupation, determine the total number of years he was employed or available for employment in the shown occupation.

In the "Educational Years" block, enter the highest grade of school completed by the individual, including any part-time and night courses. Use "12th grade" to indicate completion of high school, "13th grade" for one year of college, etc. Also, enter the type of school and number of years completed in specialized schools, such as nursing school, accounting school or ungraded vocational school.

Item 22 (Diagnosis) - Enter the diagnosis shown in Item 29 on most recent SSA-831 or item 22 on SSA-833 in file; with multiple impairments enter the first impairment listed.

Item 23 (MOB Code) - See §T6269 Item 30 for the appropriate code.

Item 24 Remarks - See §T6269 Item 41 for possible entry to explain special situation.

Item 25 Diary Date - Check TWP block if beneficiary is entitled to and has not completed a TWP and is continuing to work; check block TWP, enter the anticipated eighth month of work. Check "None", when appropriate.

Item 26 - Cross out Disability Examiner, write C/R and sign in this block

Item 27 - Enter current date.

Item 28, 29, and 30 - Leave blank.

Item 31 - For continuance of disability enter the appropriate continuance letter number. (See Exhibits 5 through 9.) For cessation of disability enter appropriate paragraph(s) number (See Exhibit 10).

Letter 10 (Exhibit 8) contains a choice of two inserts. When the file is to be forwarded to BDI in a CDB Continuance after the TWP has expired, the DO will indicate in Item 31 of Form SSA-833 - "10" followed by insert number "1" or "2" (i.e., "10-1" or "10-2"). When the file is to be forwarded to a Program Center indicate in Item 31 "Exhibit 106(a)" - (i.e., "Ex. 106(a)-1"; or "Ex. 106(a)-2"). Use insert "1" when block 21B of Form SSA-833 is checked (TWP completed/Work continuing). Leave Item 31 blank if DWB or DWB-DIB. In reconsideration cases enter Exhibit 12 for DIB or CDB cessation.

Letter 11 - CDB Continuance (TWP Not Expired)

Indicate in Item 31 of SSA-833 "11" in RSI and BDI Cases followed by the date of expected 9th month of TWP, i.e., "11-4/74".

Items 32-33 - Leave blank.

Item 34 Category - Check the appropriate block.

(b) SSA-834 (Continuation Sheet) If used, check Item 12 of SSA-833

Summarize the evidence supporting the DO's conclusion that the claimant was or was not engaged in SGA or has returned to SGA. The rationale for continuance, for example, should show that the beneficiary did not complete his TWP or that it was determined that his work activity after the TWP did not represent SGA.

The DO reviewer should sign and date the SSA-834.

The rationale for cessations should show:

(1) that the due process requirements are met (see §T6273).

(2) that he was or was not entitled to a TWP, that his work activity was determined to be SGA and that his month of cessation was determined to be (month/year).

T6272. FLAGGING CASES INVOLVING SGA WORK ISSUES

When a work issue case is sent to BDI in accordance with §T6266, prepare the flag SSA-2822 (DO Work-Issue-Only-Case Flag - See §T6276 , Exhibit 2). Identify the appropriate category of case in Item 1 and check any applicable block in Item 2. Staple the form securely to the outside of the folder jacket. (See §6276ff and §6280ff for preparation of the folder and assembly of claims material.)

T6273. DUE PROCESS IN WORK ISSUE CASES

(a) General

Advance notice is required before benefits are stopped unless the action is based solely on work information reported by the beneficiary (or his payee), it is clear that he knew the effect of such information when he gave it, and there is no substantive conflict in the evidence. For example, when the folder is documented that the beneficiary has been informed of the purpose of the CDI (e.g., a completed SSA-821(a) is in file) and he reported the information supporting a cessation and no conflict exists (see "b" below), the beneficiary has been afforded "due process" without need for further notice to the beneficiary unless he states that he believes that his benefits should be continued. Any information or evidence received as a result of this contact must be considered before the DO completes its determination.

(b) Material Conflicts in Work Activity Cases

When a material conflict arises from the beneficiary's answers on the report of his work activity or from other evidence, the DO will resolve the conflict with the beneficiary. Where it appears that a determination of cessation will result and the evidence supporting the cessation was not provided by the beneficiary, or it is not obvious that the beneficiary expects his benefits to stop, notify the beneficiary of the proposed stoppage of his benefits, the reasons for the stoppage, and afford him an opportunity to submit rebuttal evidence. A material conflict exists if a discrepancy in the amount of earnings or period of work raises a question about the correct month of cessation, e.g., the beneficiary alleges he did not work or that he did not earn the amount of wages reported. A material conflict may also exist when the beneficiary states that his impairment affects his ability to perform his work, his work is subsidized, or he indicates that he does not believe that his benefits should be ceased. When additional development

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is needed to resolve any issue, this should be done without delay. If there is any doubt concerning the beneficiary's understanding regarding his right to continue to receive benefits, resolve the doubt by furnishing the beneficiary with a predetermination notice to afford him advance notice of benefit stoppage and the opportunity to present rebuttal evidence.

(c) Predetermination Notification

Predetermination notices must contain the following key elements and the folder should be documented accordingly:

Note: Auxiliary beneficiaries not living in the same household must be furnished with a copy of the notice sent the primary beneficiary.

(1) Inform the beneficiary that based on the evidence now in file it appears that a determination would have to be made that he has regained ability to engage in SGA in (month/year.)

(2) Summarize the pertinent evidence and explain why it appears that he has regained the ability to engage in SGA as well as:

(A) the basic facts regarding the nature of the work being done (e.g., job title);

(B) the name of the employer(s);

(C) the number of months employed;

(D) the dates of employment; and

(E) the current or most recent salary.

(3) Explain that we are notifying him at this time to give him an opportunity to present any additional evidence that he wants us to consider.

(4) Tell him that unless we hear from him within 10 days the Social Security Administration will make a formal determination based on the evidence in file. Point out that it is important, therefore, that he submit a statement or evidence within 10 days or let us know if he needs more time.

(5) Explain that when a formal determination is made he will be notified in writing what the determination is. Also inform him that if it is determined he has regained the ability to engage in SGA and therefore that his disability has ceased, he will be eligible to receive benefits for the month in which disability ceased and for each of the two months following that month.

(d) Suggested Language for Predetermination Notice

"Earlier, you were notified that your claim was being reviewed to decide whether you are again able to do substantial gainful work. This is to notify you that based on evidence now in file it appears you regained ability to engage in substantial gainful activity in (month/year)."

Use the following two paragraphs only where the beneficiary was entitled to a trial work period and has completed the trial work period §6703ff. "The Social Security Law provides a trial work period so that you can test you ability to work, despite your impairment, without losing benefits. The trial work period may last for as long as 9 different months in which you have done some work. These 9 trial work months may be consecutive or they may be separated by months in which you do no work at all. Any month in which you worked and earned over $50 in employment or worked more than 15 hours in self-employment since you became entitled to benefits counts as one of the 9 work months.

"Our decision is based on the actual work you did during this 9 month period and how much you have been paid for doing the work. (Earnings of more than $140 a month for instance, usually indicate that a person has regained his ability to do substantial gainful work.)

"The evidence shows that you returned to work in (month/year) for the (employer's name). You worked as (job title). You were paid $ an hour working an average of hours per week. At the present time, you continue to work doing (provide a brief description of duties) and you earn an average of $ a month. Based on the evidence in file, it appears that a determination will be made that you regained ability to engage in substantial gainful activity in (month/year). The law provides that an individual will receive his benefit payments for the month his disability ends and the following 2 months. Therefore, the last disability check to which you would be entitled would be for the month of (month/year).

"We are writing at this time to give you the opportunity to present any additional statement or evidence you want to be considered before a determination is made. If you want to submit such a statement or evidence, please send it to us within the next 10 days using the enclosed envelope which requires no postage.

"If you do not contact us within 10 days we will make a formal determination as to your continuing entitlement to benefits based on the evidence in file. It is important, therefore, that you let us know within 10 days if you want to submit a statement or evidence. If additional time is needed for submission of this material, consideration will be given to your request for more time".

BEST COPY AVAILABLE

(e) Following up on Predetermination Notices

Contacts with the beneficiaries, including auxiliaries, whether in person, by telephone, or by mail should be documented. The DO will set up appropriate diary controls, complete its determination, and send the folder to BDI at the appropriate time. The DO is not expected to follow up with a beneficiary who fails to respond to the letter; if there is no response in 15 days, the DO will complete its action. Where the beneficiary does respond to the letter but requests more time to get additional evidence, the DO should follow up 20 days thereafter if the evidence is not forthcoming. The DO should be in a position to complete its determination no later than the 40th day after the predetermination notice was sent to the beneficiary.

(f) Acknowledging Receipt of Additional Information

Where additional information is received that does not alter the proposed finding of cessation, the DO will prepare a brief acknowledgement. This acknowledgement is required even though the beneficiary's response is not considered substantive. If, as a result of the beneficiary's response the cessation date is changed to a date earlier than the date mentioned in the original predetermination notice, a second predetermination notice is necessary.

The following language should be contained in the notice. "This acknowledges receipt of the additional information you sent to us. It will be considered along with the other evidence in your case in arriving at a determination as to your continuing entitlement to disability insurance benefits. When the formal decision is made, you will be notified."

Note: Do not include any statement as to the significance of the information received.

T6274. SUSPENSION OF BENEFITS BECAUSE OF WORK ACTIVITY

Request for the suspension of disability benefits in work issue cases should only be made when the evidence convincingly establishes a basis for cessation of benefits, an overpayment exists or is imminent, and the DO expects the completion of the CDI to be delayed over 40 days (§6706). Suspension of disability benefits (including auxiliary payments, if any) is to be processed only after advance notice (in person, by phone, or by mail) under "due process" procedures (see §6707). The DO will notify the beneficiary and all auxiliary beneficiaries not living in the same household of any proposed action to suspend benefits (in accordance with §6706) before transmitting a suspension request to BDI. The DO should not suspend if cessation is effective for the current month since the beneficiary is entitled to two additional months of benefits after the month of cessation. The DO will not use the suspension procedure when possible reentitlement after a work cessation exists. The DO should develop and document all aspects of possible reentitlement and send to the SA.

T6275. BDI FEEDBACK TO DO'S ON DEFICIENCIES AND REVISED DETERMINATIONS

Where BDI's review of the case reveals technical deficiencies only, the incorrectly completed items on the SSA-831 will be circled, missing information will be entered, the involved items will be identified in item 41, and the DO copy will be returned for informational purposes.

Where BDI's review reveals a substantive deficiency in the SGA determination, BDI will either revise the determination, return the case to the DO for additional information, or send the case to the SA for a medical vocational determination. In any of these situations, the DO will be notified by BDI on an SSA-DL880, or by a photocopy of SSA-847 (BDI Request for Case Action) which is used to transmit the case to the SA.

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE

Social Security Administration

March 22, 1974

SSA DISABILITY INSURANCE LETTER NO. II-46

(To be filed at the end of Part II of the
Disability Insurance State Manual)

SUBJECT: Jurisdiction of Work Issue Only Cases

I. General

The State agreements have been modified to exclude from SA jurisdiction any case in which the issue to be resolved is solely whether or not the individual is or was engaging in substantial gainful activity. Social security offices will make determinations of denial, cessation, or continuance, as appropriate, in such cases, subject to BDI review. If a case cannot be decided solely on the basis of whether the claimant engaged in SGA in initial, continuing, or reconsideration cases, the SA will resolve the medical and vocational issues unless the case is otherwise excluded from SA jurisdiction. Thus, some claims in which the district offices have determined that work activity is SGA will be sent to the SA for a determination, for example, the claimant alleges blindness or a closed period of disability can be established. All work issue cases sent to the SA will contain a special determination (Form SSA-553) resolving the SGA question. This rationale should be incorporated into the SA determination.

The following instructions apply only to Title II cases. Instructions for handling work issue Title XVI new claims are included in DIL II-42 (Revised).

II. Work Issue Cases to be Sent to State Agencies

A. Initial Disability Claims

1. Work Activity Not SGA

The claimant is engaging in work activity at the time of filing but the DO concludes that the work activity is not SGA.

2. SGA Ceased

The special determination prepared by the DO shows that the claimant engaged in SGA after the alleged onset date but subsequently ceased SGA. The SA may find an onset date subsequent to the period of SGA, or may find that the claimant is not disabled.

3. Claimant Currently Engaging in SGA but a Closed Period of Disability is Possible

Where the claimant is currently engaging in SGA but previously did not engage in SGA for a period of at least 12 months due to an impairment, the SA will determine whether he is entitled to a closed period of disability. If a closed period can be established, the period will end as of the date the claimant returned to SGA as shown in the DO special determination.

4. Alleged Visual Impairment

If a DIB or freeze claimant, or a CDB claimant age 55 or over, is engaging in SGA but alleges a visual impairment and disability was not previously established, the DO will forward the case to the SA for a disability determination. If disability is established on the basis of statutory blindness, the SA determination should show that the claimant is not under a disability for cash benefit purposes.

If it is determined that the claimant is statutorily blind, and is over age 55, and the DO has determined that he is engaging in SGA, the SA will resolve the issue of whether his work is comparable to the SGA he performed before the date he was both age 55 or older and blind (DIL III-7).

B. Continuing Disability Cases

The beneficiary is not engaging in SGA and either (1) the CDI development indicates possible medical recovery (e.g., new material evidence or a statement of medical

recovery) or (2) the medical diary has matured or will mature within 2 months; the DO will forward the case to the SA.

C. Reconsideration Cases

Reconsideration cases in which there is a need for a medical-vocational determination after DO resolution of the work issue will be sent to the SA. If the basis for the initial denial or cessation was SGA, and the reconsideration evidence now shows that the claimant or beneficiary was not engaging in SGA, the special determination prepared by the DO will include an explanation of why the initial determination is being reversed.

III. Work Issue Arises While Case is in SA

If the SA learns that the claimant or beneficiary is working, development should be discontinued and the file returned to the DO for development and resolution of the work issue, unless the SA has enough information to make a decision on other grounds (e.g., a medical-vocational denial, closed period of disability, or the claimant is entitled to a trial work period). When returning a case to the DO, annotate the folder to show the status of the medical-vocational development in the event that the file is subsequently returned to the SA. Evidence received in the SA subsequent to return of the folder to the DO should be forwarded to the DO for association. If the SA makes a decision on other grounds the completed case should be sent to BDI in accordance with the regular routing procedures.

If the DO is notified of work activity after the file has been sent to the SA, the DO will develop the information necessary for an SGA determination. If it finds that the work activity is cause for denial, it will request the SA to return the folder so that a determination can be made and the claim forwarded to BDI. If the DO determines that the claimant's work is not a basis for denial, or if the SA is making a decision on other grounds (i.e., a medical-vocational denial, closed period of disability, or the claimant is entitled to a trial work period), the developed material and a special determination on the work issue will be forwarded to the SA. Where the DO has received its copy of the SSA-831 from the SA showing that the file was sent to BDI, the DO will notify BDI immediately by teletype that the claimant returned to work and forward to BDI the development and a special determination showing that the claimant did or did not engage in SGA.

IV. Pipeline Cases

Cases that are pending in the SA at the time that these procedures are implemented should be adjudicated if the SA has all the information necessary to make an SGA determination. Cases that are pending in the SA because there is insufficient information to resolve the work issue should be returned to the DO, unless the SA is able to make a decision on other grounds (i.e., a medical-vocational denial, closed period of disability, or the claimant is entitled to a trial work period). For SGA determinations made in the SA subsequent to the change in jurisdiction, the SA should flag the case by stapling a Form OAAD-408 (Route Slip) addressed to BDI to the outside of the folder, with the words "SGA Pipeline Case" in the remarks section of the form.

V. Request for Guidance

Please refer any questions or problems which may arise pursuant to these instructions to the Regional Representative, DI.

Bernard Popick, Director
Bureau of Disability Insurance

Action Note:

DIL III-11, § III.E. (page 10) - Delete the parenthetical statement at the end of the first paragraph and cross-refer this section to DIL II-42 (Revised 1/31/74).

APPENDIX C

Estimated Cost of Providing Oral Evidentiary Hearings Prior to Termination of Social Security Disability Benefits

1. NUMBER OF HEARINGS

The Social Security Administration projects that in the fiscal year 1976 there will be approximately 44,000 initial determinations that disability has ceased. On the basis of past experience (see App. A, *supra,* p. 10A), at least 25 percent (*i.e.,* 11,000) would dispute, and request reconsideration of, that determination under present procedures. If a pre-termination oral hearing were substituted for the present reconsideration procedure (see *id,* at 10A–11A), it seems reasonable to take 11,000 as a base figure for requests for pre-termination evidentiary hearings (cf. p. 51, *supra,* n. 62).

2. LENGTH OF THE PERIOD OF EXTENDED OVERPAYMENTS

The initial element is the period of pre-hearing notice given. While *Goldberg* v. *Kelly,* 397 U.S. 254, indicated that a seven-day notice would ordinarily be constitutionally sufficient for welfare termination hearings (397 U.S. at 268), the nature of the issues, and the possible need to obtain medical witnesses, or to travel to a distant city for a hearing, suggest the advisability of providing somewhat greater notice than that, such as 30 days,[1] even if a shorter period

[1] Under the SSI program, Congress has provided that a person disagreeing with an eligibility determination may request a hearing within 30 days. 42 U.S.C. (Supp. III) 1383(c)(1).

might be constitutionally sufficient. Whatever the period, benefits would presumably have to be paid to all beneficiaries for the month during which it is determined whether a hearing is being sought.

Even assuming that the body conducting the hearings (whether the state agency, the SSA district office, or the Bureau of Hearings and Appeals) could immediately absorb and continue to keep current with the new caseload of hearings, it is unrealistic to assume that hearings will typically be held and cases decided immediately after the minimal notice period. Even without regard to existing caseloads, backlogs and staff shortages, it seems prudent to expect that requests for pre-termination hearings would result in decisions, on the average, no sooner than two months later.[2] To the extent that the realities of the present situations of the agencies involved are considered, this period must inevitably be longer.

3. COST OF BENEFIT OVERPAYMENTS

If benefits are paid to workers subsequent to the initial determination that they are no longer disabled, and that determination is not challenged or is upheld in further proceedings, the net cost of the resulting overpayment of benefits will depend on several factors.

SSA estimates that, under current procedures, initial determinations are made one month after the month of cessation of disability in about half the cases and two or more months after cessation in the remainder. Accordingly, in half the

[2] Under the SSI program, Congress has provided that, after a hearing, determinations shall be made within 90 days of the request for a hearing, "except to the extent that the matter in disagreement involves the existence of a disability * * *." 42 U.S.C. (Supp. III) 1383(c)(2).

cases the two-month grace period (see p. 16, *supra*) has already expired and benefits are terminated immediately, while in the other half benefits are terminated one month after the initial determination. Accordingly, in half the cases any extension of the payment of benefits will be beyond the grace period, while in the other half any extension beyond one-month will do. Thus, as to half of the 33,000 who would not seek a hearing, there would have been a one-month overpayment for the period given within which to do so.

As to those who do seek a hearing, one must estimate the proportion of cases in which the ultimate decision sustains the initial determination that the worker is no longer disabled. Under present procedures, initial determinations concerning initial claims are sustained in about 60 to 70 percent of the reconsiderations (see p. 31, *supra*), and about 50 to 60 percent of the far smaller number of cases in which post-termination hearings are requested (see p. 31, *supra*). If we assume an "affirmance" rate of 60 percent, then in 30 percent of the cases where pretermination hearings are sought there would be overpayments for every month following the initial determination, and in 30 percent there would be overpayments beginning with the second month after the initial determination.

The ultimate cost of all such overpayments depends upon the prospects for recoupment. Since most terminated beneficiaries will presumably not be receiving other payments that the Secretary could withhold, the only alternative would be legal action against those who cannot or will not voluntarily return the overpayments. Even if beneficiaries are fully forewarned that benefits received subsequent to the initial deter-

mination may be subject to repayment if that determination is sustained or if a hearing is not sought, the rate of such recoveries, where warranted, would be low. Moreover, in many cases the Secretary will not be entitled to seek recoupment under the Act and regulations (see pp. 32–33, *supra*). Based on past experience, SSA believes that a recoupment rate exceeding 33 percent would be unrealistic.

Application of these figures to the current average monthly benefit of $335 produces a total cost of approximately $10,000,000 for the first month following the initial determination and $1,500,000 for each month of delay thereafter. Under present procedures at least ten months now elapse from the request for a hearing to the decision after hearing (see pp. 50–51, *supra*), and if comparable delays were to occur with pre-termination hearings the cost in overpayments alone could amount to $23,500,000 annually.

4. ADDITIONAL ADMINISTRATIVE COSTS

The actual administrative cost involved in proviaing the necessary hearings is a function of the cost per ing to SSA, the average cost of an administrative law judge hearing is currently $536. Thus, the 11,000 projected hearings would cost about an additional $6 million annually. Although a state agency hearing structure might entail lower costs per hearing (estimates vary between $150 and $200 per hearing) there would be the added costs, both in dollars and in hours, of training personnel and implementing a totally new system.

Against these costs must be offset the cost of some unpredictable portion of the post-termination hearings (currently 1,900) as well as the 11,000 reconsidera-

tions[3] that would not be required (see p. 63A, *supra*). Even if, contrary to the premise of *Goldberg* v. *Kelly*, (see p. 52, *supra*, n. 63), all post-termination hearings were eliminated or rendered unnecessary, the additional administrative costs would still be substantial, ranging from about $1.3 million to $4 million annually.[4]

In addition, a requirement of live medical testimony at such hearings would substantially increase the costs. *Richardson* v. *Perales*, 402 U.S. 389, 406; cf. *Staff Report* 229.

[3] No precise data on the cost per reconsideration is available, but the average unit cost of all state agency determinations (excluding the cost of consultative medical examinations) was $50 in 1973 (*Staff Report* 150), and we use that as a rough estimate.

[4] Depending whether the hearing cost averages $200 or $500.

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